

Lunch		Dinner	
D. _____	D. <u>5569.86</u> - <u>52.32</u> = <u>5517.54</u>	D. <u>5569.86</u> - <u>52.32</u> = <u>5517.54</u>	D. <u>5569.86</u> - <u>52.32</u> = <u>5517.54</u>
B. _____	B. <u>25.53</u> - <u>4.77</u> = <u>20.76</u>	B. <u>25.53</u> - <u>4.77</u> = <u>20.76</u>	B. <u>25.53</u> - <u>4.77</u> = <u>20.76</u>
<b>Daily Tip Sheet</b>		<b>Daily Tip Sheet</b>	
Day: _____		Day: <u>SATURDAY</u>	
Date: _____		Date: <u>12-13-14</u>	
No. of Waiters: _____		No. of Waiters: _____	
1 Adem		1 Adem	
2 Al		2 Al	
3 Amir		3 Amir	
4 Anass		4 Anass	
5 Andre		5 Andre	
6 Andy		6 Andy	
7 Ante		7 Ante	
8 Arlino		8 Arlino	
9 Bardhyl		9 Bardhyl	
10 Behram		10 Behram	
11 Carlos		11 Carlos	
12 Chris		12 Chris	
13 Elvis		13 Elvis	
14 Ermal		14 Ermal	
15 Francisco		15 Francisco	
16 Fredy		16 Fredy	
17 Gerardo		17 Gerardo	
18 Gianni		18 Gianni	
19 Gipa		19 Gipa	
20 Ian		20 Ian	
21 Iber		21 Iber	
22 James		22 James	
23 Jay		23 Jay	
24 Jimmy	Adnan	24 Jimmy	Adnan
25 _____		25 _____	
26 Juan	Bekim	26 Juan	Bekim
27 Juan II		27 Juan II	
28 Kenan	Eni	28 Kenan	Eni
29 Khalid		29 Khalid	
30 Lucky		30 Lucky	
31 Luis		31 Luis	
32 Luis II		32 Luis II	
33 Marco		33 Marco	
34 Milazim		34 Milazim	
35 Mostafa		35 Mostafa	
36 Rashid		36 Rashid	
37 Sadik		37 Sadik	
38 Sayed		38 Sayed	
39 Silvio		39 Silvio	
40 Val		40 Val	
41 Valon		41 Valon	
42 Xavit		42 Xavit	
43 Youssef		43 Youssef	
44 _____		44 _____	
45 _____		45 _____	
46 _____		46 _____	

Please do not write anything in the shaded area.

Please do not write anything in the shaded area.

Please Do not cut this sheet in Half

Please Do not cut this sheet in Half

Transfer Credit Card Tip

Transfer Credit Card Tip

246.11 103.00

164.07 68.07

92.07 34.21

SATURDAY		12/13
DAY	DINNER	DATE
<b>FULL</b>	<b>1/3 RD</b>	<b>8</b> <b>24</b>
ANAAS	LUIS RAMIREZ ✓	
X ANDY ✓	SA BIVINGTON ✓	
X BEHRAM	MASS ALAMI ✓	
X CARLOS ✓	EDWARD CASSIN ✓	
X LUIS ✓	PAUL CIGDEMCI ✓	
LUIS (2)	TANNER COX ✓	
X MOSTAFA ✓	HEATHER DEBEO ? ✓	
X SYED ✓	LUIS (3) GUEVARA ✓	
<b>1/3 RD</b>	FREDDY GUZMAN ✓	
from KITCHEN	VIAOR IVANOV ✓	
	ALDO RIOS ✓	
	OSCAR CALLE ✓	
<del>RAFAEL VARGAS</del> ✓	ANDRES ZENTENO ✓	
<del>RAFAEL VARGAS</del>	MAUR RIVERA ✓	
MIGUEL PEQUERO ✓	MAX VASHINUA [DAD] ✓	
MIGUEL FLORES ✓	<del>RAFAEL VARGAS</del>	
PABLO [PERAGUA] ✓	JUNOR VARGAS ✓	
RAFAEL CERDA ✓	JASS PLUMA ✓	
JOSE LUIS MARTINEZ ✓	NOBIA BUAPTE ✓	



Michael Cetta, Inc.  
Lunch & Dinner Tips  
From: 12/16/14 TO 12/19/14

Names	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Tips	Charge
Adam	-	-	-	-	-	-	-	-
AJ	-	-	-	-	-	-	-	-
Amir	-	-	-	-	-	-	-	-
Anas	642.70	576.16	979.83	753.67	406.04	242.82	3,601.22	92.70
Andre	-	-	-	-	-	-	-	-
Andy	523.38	576.16	979.83	753.67	236.70	242.82	9,312.66	87.70
Artin	-	-	-	-	-	-	-	-
Arturo	-	-	-	-	-	-	-	-
Bachyl	-	-	-	-	-	-	-	-
Behnam	523.38	576.16	979.83	586.47	406.04	242.82	3,814.70	87.84
Carlos	642.70	576.16	979.83	586.47	406.04	242.82	3,234.03	88.25
Chris	-	-	-	-	-	-	-	-
Elena	-	-	-	-	-	-	-	-
Emal	-	-	-	-	-	-	-	-
Francisco	-	-	-	-	-	-	-	-
Frederic	-	-	-	-	-	-	-	-
Gerardo	-	-	-	-	-	-	-	-
Glenn	-	-	-	-	-	-	-	-
Olga	-	-	-	-	-	-	-	-
Ian	-	-	-	-	-	-	-	-
Iber	-	-	-	-	-	-	-	-
James	-	-	-	-	-	-	-	-
Jay	-	-	-	-	-	-	-	-
Jeremy	-	-	-	-	-	-	-	-
Josanna	-	-	-	-	-	-	-	-
Juan	-	-	-	-	-	-	-	-
Juan II	-	-	-	-	-	-	-	-
Kanan	-	-	-	-	-	-	-	-
Khalid	-	-	-	-	-	-	-	-
Lucky	-	-	-	-	-	-	-	-
Luis	542.70	576.16	979.83	753.67	236.70	242.82	3,391.88	88.29
Luis II	542.70	365.02	979.83	753.67	406.04	242.82	3,290.08	87.19
Marco	-	-	-	-	-	-	-	-
Mahmud	-	-	-	-	-	-	-	-
Mohamed	-	576.16	979.83	586.47	236.70	242.82	2,681.98	69.48
Mohamed	-	-	-	-	-	-	-	-
Rachid	-	-	-	-	-	-	-	-
Sadek	-	-	-	-	-	-	-	-
Sayed	523.38	576.16	979.83	753.67	406.04	242.82	3,481.90	82.27
Sayed	-	-	-	-	-	-	-	-
Val	-	-	-	-	-	-	-	-
Valon	-	-	-	-	-	-	-	-
Xavier	-	-	-	-	-	-	-	-
Yousef	-	-	-	-	-	-	-	-
✓ Oscar	180.90	435.40	979.83	753.67	406.04	385.45	9,121.49	82.72
Andreas	174.46	121.67	409.85	586.47	236.70	385.85	1,894.80	50.21
Hugo Rios	174.46	121.67	409.85	586.47	236.70	385.85	1,894.80	50.21
Hector	174.46	121.67	409.85	753.67	406.04	257.78	2,123.45	56.27
Luisa	180.90	192.05	409.85	753.67	406.04	257.78	2,800.27	58.31
Shay	174.46	192.05	409.85	-	-	257.78	1,034.12	27.40
Maria	174.46	192.05	409.85	586.47	236.70	257.78	1,857.29	49.22
✓ Halil	180.90	121.67	409.85	642.20	406.04	257.78	2,018.42	53.49
Ismael	174.46	121.67	249.70	293.24	236.70	257.78	1,333.53	35.34
Ismael	174.46	121.67	409.85	586.47	236.70	257.78	1,788.91	47.95
Heleno	174.46	121.67	409.85	586.47	236.70	257.78	1,788.91	47.95
Luis III	180.90	435.40	979.83	753.67	406.04	257.78	3,013.60	79.86
Freddy	174.46	121.67	409.85	586.47	236.70	257.78	1,788.91	47.95
Yavor	174.46	121.67	249.70	293.24	236.70	257.78	1,333.53	35.34
Junior	174.46	121.67	409.85	586.47	406.04	257.78	1,955.25	51.24
Miguel P.	174.46	121.67	409.85	642.20	406.04	257.78	2,011.88	53.92
Rafael	174.46	121.67	249.70	586.47	236.70	257.78	1,626.78	43.11
Rafael	174.46	121.67	249.70	586.47	236.70	257.78	1,626.78	43.11
Pablo	174.46	192.05	409.85	753.67	406.04	257.78	2,193.83	58.13
Miguel F.	174.46	121.67	249.70	586.47	236.70	257.78	1,626.78	43.11
Edward	174.46	121.67	249.70	586.47	236.70	322.58	1,691.58	44.83
Max	-	121.67	409.85	293.24	236.70	257.78	1,327.03	35.17
Jose Puma	174.46	121.67	409.85	293.24	236.70	257.78	1,501.29	39.79
José Luis	174.46	121.67	249.70	642.20	406.04	257.78	1,859.54	49.28
Oscar II	174.46	192.05	409.85	642.20	406.04	257.78	2,090.17	55.39
Nuben	174.46	121.67	409.85	398.87	406.04	257.78	1,726.56	45.75
Ian Morrison	174.46	121.67	409.85	293.24	236.70	257.78	1,501.29	39.79
Sylvia	174.46	121.67	409.85	293.24	236.70	257.78	1,501.29	39.79
Alex	-	-	-	-	78.90	88.52	167.42	4.44
Osken	-	-	-	-	78.90	88.52	167.42	4.44
Bakim	209.79	219.84	514.47	398.57	457.50	189.16	1,977.33	52.40
Elvi	-	-	-	-	-	-	-	-
Adnan	-	-	-	-	-	-	-	-
Mike DeSilva	170.79	167.84	514.47	321.07	184.78	189.16	1,548.11	41.02
Travis	78.01	167.84	-	398.57	184.78	189.16	1,016.90	27.00
Mike	-	-	-	293.24	-	-	293.24	7.77
Abdou	-	-	-	-	-	-	-	-
Musa	-	-	-	-	-	-	-	-
Walter	-	-	-	-	-	-	-	-
Picardo	-	-	-	-	-	-	-	-
Total	8,578.39	9,093.44	19,782.74	20,076.53	11,268.70	9,566.43	78,286.23	2,074.59

MCI049259

1 complaint allegation since May 29th regardless of the point  
2 that he resigned. The individual was also, at the time that he  
3 committed the act alleged in the complaint, was a Supervisor  
4 and Agent employed by Respondent; and the complaint allegation  
5 really is just a more specific pleading of the general coercive  
6 allegation in the charge document.

7 JUDGE ESPOSITO: All right. I'm going to deny the motion  
8 to dismiss. The parties can make arguments with respect to  
9 whether the allegation was encompassed in the charge and any  
10 other arguments they want to make regarding the legal  
11 insufficiency of the allegation in post-hearing briefs, and  
12 I'll consider them.

13 MR. BIANCO: Thank you, Your Honor.

14 JUDGE ESPOSITO: Do the parties want to discuss the  
15 response to the subpoena on the record at this point?

16 MS. LEAF: Yes.

17 JUDGE ESPOSITO: Okay.

18 MS. LEAF: The General Counsel served Respondent with a  
19 subpoena duces tecum on September 15, 2015 -- with 14  
20 paragraphs of documents to be produced; and off-the-record this  
21 morning, Respondent and the General Counsel discussed  
22 production of the documents; and so I have been given two discs  
23 and a zip or flash drive, and I've been directed by Responding  
24 Counsel to various paragraphs and what's contained on the disc.  
25 They represented to me that there's no responsive

1 the break, and then --

2 JUDGE ESPOSITO: Sure; okay.

3 MS. LEAF: -- we'll advise.

4 MR. MARTIN MILNER: Time?

5 MS. LEAF: I just want to have the time so I can figure  
6 out --

7 JUDGE ESPOSITO: How much time would you like to take a  
8 look at what's on the disc?

9 MS. LEAF: In light of the amount of documents, is an  
10 hour okay?

11 JUDGE ESPOSITO: Yes.

12 MS. LEAF: Okay. Thank you.

13 JUDGE ESPOSITO: So why don't we go off the record for an  
14 hour. If you need additional time after that, let me know and  
15 then we can work out the timeframe.

16 MS. LEAF: Okay; thank you.

17 MR. MARTIN MILNER: That's fine, Your Honor.

18 JUDGE ESPOSITO: We'll be back at quarter after eleven.  
19 Off the record.

20 (Whereupon, a brief recess was taken.)

21 JUDGE ESPOSITO: In an off-the-record discussion, the  
22 Respondent requested that a Sequestration Order be issued; and  
23 from the discussion, it appears that General Counsel and  
24 Charging Party have no objection to that; is that correct?

25 MS. LEAF: I don't object.



1           Counsel may, however, inform his or her own witnesses of  
2   the content of testimony given by any opposing party's witness  
3   to prepare to rebut that witness' testimony.

4           It is the responsibility of Counsel to see that they and  
5   their witnesses comply with the Sequestration Order.

6           Okay; and with that, we're off the record until one  
7   o'clock so that the General Counsel can continue their review  
8   of the documents produced this morning.

9           Off the record.

10           (Whereupon, at 11:30 a.m. a recess was taken,  
11                           to reconvene at 1:15 a.m.)

12

1 A F T E R N O O N   S E S S I O N

2 (Time noted: 1:11 p.m.)

3 JUDGE ESPOSITO: Okay. On the record.

4 All right. So now we will hear opening statements. Ms.  
5 Leaf, go ahead.

6 MS. LEAF: Good afternoon, Your Honor.

7 Counsel for the General Counsel contends that the  
8 probative evidence you'll hear throughout this hearing will  
9 prove that Respondent, Sparks Restaurant -- I'm going to stop  
10 here just one second on that.

11 Is your representative Steve Cetta?

12 MR. BORIS CETA: Yes.

13 MS. LEAF: Okay. So I just -- in terms of sequestration,  
14 --

15 MR. MARTIN MILNER: We have the other witness with him.

16 MS. LEAF: Okay.

17 JUDGE ESPOSITO: Hold on. Before you continue, I heard a  
18 cellphone. Can everybody please turn them off completely so  
19 that they don't interfere with the recording.

20                      Go ahead.

21 MS. LEAF: The General Counsel contends that the  
22 probative evidence you'll hear throughout this hearing will  
23 prove that Respondent, Sparks Restaurant, violated Section  
24 8(a)1 and 3 of the Act as alleged in the Complaint.

25 The GC alleges that Respondent failed and refused to

1 recall eligible strikers as they can see existed on the card,  
2 even assuming that they were permanently replaced and that  
3 additionally, Respondent discharged the strikers.

4 First, you will hear testimony that the Waiters and  
5 Bartenders at Sparks voted to be represented by UFCW Local 342  
6 in 2013. You will hear that after more than a year of contract  
7 negotiations, the employees became frustrated with Sparks'  
8 refusal to agree to a contract.

9 As a result, on December 5, 2014 36 Waiters and  
10 Bartenders decided to go on strike. They made an unconditional  
11 offer to return to work a few hours later, but as contract  
12 negotiations again did not proceed, they went on strike again  
13 on December 10, 2014.

14 The employees were on strike until December 19, 2014 when  
15 they made, both verbally and writing, an unconditional offer to  
16 return to work.

17 Sparks will say that it rejected the employees' offer to  
18 return to work because it has allegedly hired replacement  
19 employees; but Sparks will be unable to show that it hired  
20 replacements for all 36 employees who went on strike.

21 Moreover, rather than inform the strikers that they had  
22 apparently been permanently replaced and that Sparks would be  
23 putting their names on a preferential recall list as positions  
24 became available, per their Laidlaw Rights, Sparks instead  
25 discharged all 36 employees.



1 In particular, you will see documentary evidence that  
2 Sparks, through counsel, e-mailed the Union on December 22nd  
3 and rejected the employees' unconditional offer to return to  
4 work. It told the Union that it was rejecting the offer "Due  
5 to serious misconduct and unprotected activity by the striking  
6 employees."

7 Sparks will say it was building -- its building was  
8 vandalized and that some other incidents occurred, but it will  
9 not be able to meet its burden of showing any particularized  
10 evidence that any striker, let alone all 36, engaged in this  
11 misconduct which formed the basis for Sparks' decision to  
12 reject their offer to return to work.

13 You will also learn that at the time the employees  
14 offered to return to work on December 19th, Sparks had not  
15 replaced all the strikers and that positions were available for  
16 the former striker to return to work.

17 Moreover, you will learn that after December 19th, a  
18 number of alleged permanent replacement employees left Sparks,  
19 but Sparks did not offer these now vacant positions to any of  
20 the former strikers.

21 Sparks will argue that it could operate with fewer  
22 employees than it had at the time of the strike or that  
23 business was slow, and so it had no need to recall the former  
24 strikers.

25 However, the documentary evidence will prove that Sparks'

1 business defense is projectual. The documentary evidence will  
2 show that Sparks had nearly 48 Waiters and Bartenders on staff  
3 immediately preceding the strike. And immediately afterwards,  
4 the numbers dropped to 38, then 35, then 34, 33 and below.

5 You will learn that at no point in the last five years  
6 has Sparks ever operated with a skeleton crew of Waiters and  
7 Bartenders, no matter what their sales numbers were at the  
8 time.

9 After you hear this evidence, you will be convinced that  
10 the only reason Sparks did not recall the former strikers as  
11 positions became available was to punish them for engaging in  
12 protective Section 7 conduct as going on strike.

13 The General Counsel is seeking a Maycole Remedy for the  
14 former strikers including reinstatement, back pay, interest and  
15 a notice posting. The General Counsel is also seeking a remedy  
16 for the discharged strikers of reinstatement and back pay from  
17 the date of their discharge regardless of whether permanent  
18 replacements had already been hired at the time.

19 Thank you, Your Honor.

20 JUDGE ESPOSITO: Okay. Mr. Milner.

21 MR. MARTIN MILNER: I'm not going to make any opening  
22 remarks at this time. We join in with the General Counsel's  
23 position.

24 JUDGE ESPOSITO: Okay. Mr. Bianco.

25 MR. BIANCO: Your Honor, I'd like to reserve my opening,

1 but at this point, I'd like to move to dismiss the discharge  
2 allegation. I mean we talked earlier this morning about our  
3 problems with Paragraph Six where in that there was actually a  
4 charge filed, and they said that there was intimidation and  
5 coercion; and then in the complaint it shows up as  
6 solicitation.

7 Here there was never even an Unfair Labor Practice charge  
8 alleging discharge. There's a complaint that says, "On  
9 December 22nd there was a discharge." In my mind, that's the  
10 only evidence, December 22nd; so anything -- first of all, it  
11 should be dismissed. There was no complaint -- no charge ever  
12 filed.

13 In the event, however, that it's not dismissed, anything  
14 after that should be not allowed to be introduced. It is  
15 totally irrelevant. The complaint says December 22nd there was  
16 a discharge. By the letter -- by the e-mail -- the e-mail  
17 date. It doesn't say that conduct after that amounts to a  
18 discharge.

19 JUDGE ESPOSITO: You mean in terms of the alleged refusal  
20 to recall strikers as vacancies became available?

21 MR. BIANCO: No; they say that there's an actual  
22 discharge. If you have a preferential hiring with the new  
23 recall -- and we think we can show we did -- that's one thing;  
24 but to say that by not filling -- somehow by not hiring more  
25 people, that's a discharge -- it sounds like they're talking



1 about a -- not an actual discharge but a constructive discharge  
2 which was never alleged.

3 JUDGE ESPOSITO: Okay. My understanding was that the  
4 General Counsel's contending that there was a discharge on  
5 December 22nd. Is that correct?

6 MS. LEAF: That's correct.

7 MR. BIANCO: Right. And so, in terms -- but in terms of  
8 trying to prove a discharge, she's trying to prove that by not  
9 hiring people back, that's a discharge.

10 MS. LEAF: I don't believe that that that's my position.

11 MR. BIANCO: I'm trying to understand the position.

12 JUDGE ESPOSITO: Okay. That's --

13 MS. LEAF: I mean this is to be litigated.

14 JUDGE ESPOSITO: That's -- I mean that's not what I heard  
15 in terms of Ms. Leaf's opening statement.

16 MR. BIANCO: Your Honor, there's two theories in the  
17 complaint: Failure to rehire and a discharge; and the remedy  
18 they're seeking is a discharge remedy, right? A discharge  
19 remedy -- back pay back to the 22nd, when the discharge took  
20 place. That's completely different from the remedy that would  
21 apply if they failed to hire. That would be -- they would go  
22 back to when they would have been hired.

23 MS. LEAF: There's two theories -- two alternate  
24 theories in the complaint, and so the remedy being sought is,  
25 you know, either/or as it would for any --

1 that e-mail acts as a discharge.

2 If they're going to try and use that evidence that's  
3 related to failure to rehire to support a discharge, we would  
4 object to that.

5 JUDGE ESPOSITO: I mean, as I understand it, there's a  
6 theory that they were discharged on December 22nd; and there's  
7 also a theory that as vacancies became available, the Employer  
8 failed to recall the strikers in the manner that they should  
9 have been recalled within the context of Laidlaw cases  
10 interpreting Laidlaw.

11 MR. BIANCO: Right; but they're only looking for one  
12 remedy. They're looking for the discharge remedy.

13 MS. LEAF: That's not true, Your Honor. We're looking  
14 for both remedies. You know if you -- will see in the  
15 pleadings documents, GC-1, we have our request for a Maycole  
16 Remedy in the first original complaint; and the amendment to  
17 the complaint dated September 18th, we seek the additional  
18 discharge remedy.

19 MR. BIANCO: Your Honor, I would just ask you to take  
20 notice of the fact that there is no charge alleging discharge.  
21 There is no Unfair Labor Practice charge in the official record  
22 alleging discharge.

23 MS. LEAF: Your Honor, if I may, we're not proceeding to  
24 hearing on charges. We're proceeding to a hearing on a  
25 complaint; and if the Respondent's arguing that they don't have

1 I do just want to say that I received documents pursuant  
2 to subpoena this morning, and I have done the best to look  
3 through them as quickly as possible; but it's weekly payroll  
4 for five years and not just payroll, but various other  
5 documents supporting employee hours and information regarding  
6 when employees worked; and so I'm getting everything ready, but  
7 I just want to reserve my right to raise any issues if I don't  
8 see something that was produced by Respondent.

9 JUDGE ESPOSITO: Okay. Sure.

10 MR. MARTIN MILNER: I'm sorry; just before -- not to  
11 interrupt, but I just wanted to clarify -- you're going to call  
12 a witness now?

13 MS. LEAF: I am; I'm ---

14 MR. MARTIN MILNER: I just wanted, you know, go back to  
15 --

16 MS. LEAF: I'm trying to decide what to do because I'm  
17 waiting on copies of things that we just received today that  
18 I'm to use with the witness, and --

19 JUDGE ESPOSITO: How long will that take; do you know?

20 MS. LEAF: I think -- I don't know -- I think -- I'm  
21 trying to decide if I can go out of order with my witnesses and  
22 then maybe -- so I don't hold anything up --

23 JUDGE ESPOSITO: Or is there a way that -- let's go off  
24 the record.

25 (Whereupon, a brief recess was taken.)



1 A No; I don't know.

2 Q Okay. So you're just going based on what you remember --  
3 what you feel?

4 A I'm going about where --

5 Q You're -- you're contention that there's not much of a  
6 drop-off?

7 A I didn't say that there's not -- when I was there, there  
8 wasn't much of a drop-off. I don't know what goes on now. I  
9 worked there for eight years. The same Waiters that worked in  
10 December, they worked in January; they worked in August.

11 Some took vacation. Some went away. Some stayed.

12 Q But when you say --

13 A There's this -- was busier in December; yes.

14 Q Okay.

15 A But it's not like dead in January. There was plenty of  
16 business.

17 Q I'm sorry?

18 A It was not like it was dead in January. There was still  
19 plenty of business.

20 Q I'm not saying it was dead, but there was a marked  
21 decline; correct?

22 A Compared to December, yes.

23 MS. LEAF: I just want to object to this line of  
24 questioning. I don't understand what's being asked. If he  
25 asked him when the sales dropped off -- is he asking him in his

1     were.   Is that what you were thinking I was talking about?

2     A       Yes.

3     Q       Okay.   And I think we're both talking about the same  
4     thing.

5             Would a Waiter who didn't work get tips that night -- be  
6     listed on the tip sheet?

7     A       No.

8     Q       Okay.   So would a Waiter who worked and should get tips  
9     not be on that tip sheet?

10            MS. LEAF:   Objection; speculation.

11            MR. BIANCO:   Well, you -- he said he -- the Waiters  
12     prepared it.

13            JUDGE ESPOSITO:   Can somebody show him and me one of  
14     these tip sheets?

15            MS. LEAF:   I mean I have them -- I'm not marking them as  
16     exhibits.   If they want to mark them as exhibits, then they  
17     should do that; but I don't -- you know, I have bunch of random  
18     documents I have not introduced.

19            This witness is not the appropriate person to introduce  
20     them through.

21            MR. BIANCO:   Do we have any?   One second, we'll get a tip  
22     sheet.

23            JUDGE ESPOSITO:   Let's go off the record for a minute.

24                               (Whereupon, a brief recess was taken.)

25            JUDGE ESPOSITO:   All right.   Let's go back on the record.

1 it's only the statement that's alleged that is going to be  
2 subject of the case, not a previous one.

3 MS. LEAF: No; of course, this is outside 10(b) period.  
4 It's just being offered for -- again -- for, you know,  
5 corroboration.

6 MR. MARTIN MILNER: I think it would go to corroborate  
7 his anti-union animus. It's just another statement to, in  
8 fact, corroborating and substantiating the fact that he engaged  
9 in such conduct.

10 JUDGE ESPOSITO: I mean -- I don't know if that -- is  
11 anti-union animus an issue in the case? The case has to do  
12 with violation of Laidlaw Rights.

13 MS. LEAF: Well, I would argue that anti-union animus  
14 might become an animus case in that if the Respondent has the  
15 burden of proof of showing that it had a legitimate business  
16 justification for not bringing the strikers back, as alleged in  
17 the complaint, the burden shifts back to me to prove that they  
18 would have brought them back had it not -- that their defensive  
19 protection that they would not have brought them back had it  
20 not been for anti-union animus.

21 JUDGE ESPOSITO: I don't -- is that alleged in the  
22 complaint?

23 MS. LEAF: Well, it's just the burden of proof.

24 JUDGE ESPOSITO: I know -- I understand that's the burden  
25 of proof in terms of whether or not they had a legitimate

1 meeting at the Federal Mediation and Conciliation Service on  
2 March 20, 2015, become relevant to the complaint's allegations  
3 or the defenses of Sparks, we can revisit this ruling at that  
4 time.

5 Paragraphs 3, 4, and 5 of the subpoena seek documents  
6 pertaining to the employment of the striking employees with  
7 Sparks. They seek correspondence between the Union and the  
8 bargaining unit members, third parties, and all other documents  
9 pertaining to the employment status of the bargaining unit  
10 members.

11 The complaint alleges that the employees were discharged  
12 on December 22, 2014, and that, in the alternative, Sparks  
13 refused to reinstate them as openings became available. The  
14 allegations in the complaint involve the conduct of Sparks, not  
15 of the Union or the employees.

16 The law is clear that the test for whether a discharge has  
17 occurred is whether the employer's statements would reasonably  
18 lead the employees to believe they had been discharged. The  
19 Board has articulated this standard in *Tri-State Building*  
20 *Supply*, 362 NLRB 85, at Page 5, and *Grosvenor Resort*, 336 NLRB  
21 613, at Pages 617 to 618. The Board in these cases has focused  
22 on the written and oral statements of employer representatives  
23 and not on the subjective responses of the employees in  
24 question. For example, the *Tri-State* case, at Page 4 to 5,  
25 discusses oral statements of employer representatives and a

1 A Yes.

2 Q You say you were present that day. Can you please tell us  
3 what happened on December 19th?

4 A We decided to give unconditional offer to return to work.  
5 And we proceeded, me, alongside with my union representatives,  
6 Steve, Boris and John, I forget his last name, the two union  
7 representatives.

8 Q Elvi, will you speak up a little?

9 MR. BIANCO: Can you speak up, please?

10 THE WITNESS: Oh. Well, me and two union representatives  
11 decided to go in and give an offer of return to work. Upon  
12 entering Sparks, we were stopped in the vestibule, by the  
13 second door, by the security.

14 BY MS. LEAF:

15 Q Approximately, what time of day was it on December 19th?

16 A Between 3:30, 4:30.

17 Q In the afternoon?

18 A Yes.

19 Q What happened when security stopped you?

20 A We told him we -- well, Steve -- we explained who we were,  
21 I was a worker there and that they were representing the  
22 workers, and they wanted to talk to management and ownership  
23 about an unconditional offer to return to work.

24 Q What happened next?

25 A The security said hold on and they went to convey the



1 message to Walter.

2 MR. BIANCO: Objection. He can't say what security did.  
3 He can't look into security's mind, what they intended to do,  
4 what they did.

5 JUDGE ESPOSITO: I'm sorry. What was the testimony?

6 MS. LEAF: He's testifying to what he saw the security  
7 guards do.

8 MR. BIANCO: No. He testified as to what they intended to  
9 do. They went to deliver a message. They may have been going  
10 to the bathroom.

11 MS. LEAF: May I ask my question?

12 JUDGE ESPOSITO: Okay.

13 MS. LEAF: Elvi, what did you see the security --

14 JUDGE ESPOSITO: No. I mean I understand, okay, I  
15 understand your objection.

16 THE WITNESS: The security told me that they were going to  
17 convey the message.

18 MR. BIANCO: Objection to hearsay.

19 MS. LEAF: Can I continue?

20 JUDGE ESPOSITO: Hold on. The security guard, did you  
21 hear him say that?

22 THE WITNESS: Yes. He told me that he's going to go  
23 convey the message. They don't want you inside; wait, I'll  
24 convey the message.

25 JUDGE ESPOSITO: So that's what he said.

1 BY MS. LEAF:

2 Q So what did you see the security guard do?

3 A Walk up to Walter.

4 Q Where was Walter standing?

5 A Approximately five feet.

6 Q Could you hear them speak to each other?

7 A No.

8 Q What happened next?

9 A Walter was on the phone at the same time. The gentleman  
10 came back and said they don't want you guys in here.

11 Q The gentleman being?

12 A Security. One of the security guards.

13 Q And what happened next?

14 A We told them that we're just trying to get an  
15 unconditional offer to return to work. And he said, I know,  
16 but they don't want you in here.

17 Q So what did you do next?

18 A We left.

19 Q Did you return to work at Sparks after December 19th?

20 A No.

21 Q To date, have you returned to work at Sparks?

22 A No.

23 Q To your knowledge, have any of the former strikers  
24 returned to work at Sparks?

25 A No, except for recently I hear of one gentleman, very

1 He's going to have him read -- it's like double hearsay now.  
2 He hasn't asked him a question. And now he's going to have him  
3 read something that he said that somebody else, not the  
4 employer, said to him.

5 MS. LEAF: If he reads the next sentence, that's the  
6 way --

7 JUDGE ESPOSITO: Well, I don't know what he's going to  
8 read. I haven't heard it, yet. So Mr. Bianco, why don't you  
9 just continue.

10 MR. BIANCO: All right. The representative --

11 MS. LEAF: Objection. This is hearsay.

12 JUDGE ESPOSITO: Okay. What is it off --

13 MR. BIANCO: He's testifying what he heard.

14 MS. LEAF: From a representative at Fidelity.

15 MR. BIANCO: I'm just offering for the proof that he's  
16 testifying that he heard this.

17 MS. LEAF: He's offering it for the truth of the matter,  
18 Your Honor.

19 MR. BIANCO: I'm not. I need to know that it was said to  
20 him. I'll connect it later on.

21 JUDGE ESPOSITO: Okay, go ahead, Mr. Bianco.

22 MS. LEAF: I just want to note my hearsay objection.

23 JUDGE ESPOSITO: Sure.

24 MR. BIANCO: "The representative told me that we still  
25 worked at Sparks and Sparks has to tell Fidelity we do not work

1 there anymore in order for us to access the money."

2 BY MR. BIANCO:

3 Q Now that's accurate, that's what you said, right?

4 A They were confused on the situation and were not exactly  
5 clear, but they told me something to that relevance.

6 MR. BIANCO: Motion to strike as non-responsive. I just  
7 want to ask about this first.

8 JUDGE ESPOSITO: But he said they told you something, they  
9 told you --

10 THE WITNESS: They told me because based on the, I guess a  
11 kind of file, they assumed that this is the reason why, they  
12 assumed that based on the activity or whatever they signed.

13 BY MR. BIANCO:

14 Q But that's not what you said here in the affidavit.  
15 That's not what you said in the affidavit.

16 A That's what I said. They said that technically I'm still  
17 employed based on your account standing, but they weren't sure  
18 why. They were very unhelpful.

19 MR. BIANCO: I have nothing further.

20 JUDGE ESPOSITO: Okay. Any redirect based on Mr. Bianco's  
21 cross-examination?

22 MS. LEAF: I just have a question to clarify.

23 JUDGE ESPOSITO: Sure.

24 REDIRECT EXAMINATION

25 BY MS. LEAF:

1 JUDGE ESPOSITO: Please state and spell your name for the  
2 record.

3 THE WITNESS: Louis, L-O-U-I-S, LoIacono, L-O, Capital  
4 I-A-C-O-N-O.

5 JUDGE ESPOSITO: Mr. LoIacono, could you raise your right  
6 hand, please?

7 (Whereupon,

8 LOUIS LoIACONO,  
9 was called as a witness by and on behalf of the General Counsel  
10 and, after having been duly sworn, was examined and testified  
11 as follows:)

12 JUDGE ESPOSITO: Thank you, sir. Go ahead, Ms. Leaf.

13 DIRECT EXAMINATION

14 BY MS. LEAF:

15 Q Who do you work for?

16 A UFCW Local 342.

17 Q What is your job title?

18 A Executive director. I'm director of contracts.

19 Q How long have you been in this position?

20 A Director of contract, for over a year.

21 Q What if any has been your involvement with Sparks  
22 Restaurant?

23 A From the organizing campaign up to negotiating a  
24 collective bargaining agreement.

25 Q Do you recall the date of the Union's certification?



1 A July 11, 2013.

2 Q Since in or around that time, approximately how many  
3 bargaining sessions have there been?

4 A Eight or more.

5 Q How many have you attended?

6 A I attended all but one.

7 Q Do you know which one you did not attend?

8 A I was not present at the, I believe, March 20th bargaining  
9 session.

10 Q Of which year?

11 A 2015.

12 Q What did you discuss at these bargaining sessions?

13 A Grievance and arbitration procedure, paid time off, union  
14 visitation, preferential scheduling, welfare.

15 Q What were you negotiating for?

16 A Improvements in working conditions.

17 Q Was there a contract in place at the time?

18 A No.

19 Q Turning your attention to January 8th of 2014, was there a  
20 bargaining session that day?

21 A Yes, there was.

22 Q Did you attend?

23 A Yes, I did.

24 Q Who was present at the session for the Union?

25 A Myself, Mary Ann Kelly, Carolina Martinez, Val, and Chris

- 1 Q And he testified about his 401(k) .
- 2 A Yes.
- 3 Q If I recall, he wanted to take money out of the 401(k) .
- 4 A I believe that's what he said.
- 5 Q And he was not able to do that, isn't that right?
- 6 A I believe so.
- 7 Q In fact, you became aware that that was a problem for a
- 8 bunch of Sparks' strikers, correct?
- 9 A Yes.
- 10 Q In fact, in January 20th negotiations, you raised that
- 11 question, didn't you?
- 12 A I did.
- 13 Q I'm going to show you, the pages aren't numbered, but on
- 14 the January 20th negotiations, on the second page which is
- 15 double sided, the reverse of the first page, LL, is that you?
- 16 A Yes, it is.
- 17 Q According to this, you told the people from Sparks that --
- 18 MS. LEAF: Objection. He's about to read hearsay.
- 19 BY MR. BIANCO:
- 20 Q Well, you said this, didn't you?
- 21 JUDGE ESPOSITO: Why don't you ask it in a different form?
- 22 BY MR. BIANCO:
- 23 Q Well, employees -- strike that. Did you tell Marc
- 24 Zimmerman and Regina -- you know them, don't you?
- 25 A Oh, yeah.

1 Q And they were in all the negotiation sessions with you,  
2 with Sparks?

3 A Yes.

4 Q When the question of the 401(k) came up and the problems  
5 that the members were having getting their money, you told Marc  
6 and Regina what you understood the problem to be, correct?

7 MS. LEAF: Objection. I'm not sure I understand.

8 MR. BIANCO: Well, the witness has to understand.

9 JUDGE ESPOSITO: I'll overrule. Go ahead.

10 THE WITNESS: I didn't understand what the problem was.

11 BY MR. BIANCO:

12 Q Did the employees tell you what they had been told by the  
13 401(k) administrator --

14 MS. LEAF: Objection, double hearsay.

15 JUDGE ESPOSITO: No, I'll allow it in terms of just the  
16 sequence of events which led to statements, apparently, during  
17 the negotiations.

18 BY MR. BIANCO:

19 Q Didn't you convey to Marc and Regina what you thought the  
20 problem was, what the employees had told you the problem was?

21 A I inquired in regards to the locked out members trying to  
22 retrieve their money from their 401(k) plan.

23 Q Right. And you said that they can't make a withdrawal  
24 until they sign a paper saying they no longer work for Sparks.

25 MS. LEAF: Objection, hearsay.

1 BY MR. BIANCO:

2 Q Didn't you say that?

3 A That's what I was told.

4 JUDGE ESPOSITO: I'll overrule.

5 BY MR. BIANCO:

6 Q That's what you were told. Okay. The employees told you  
7 that.

8 A Correct.

9 Q And that's what you conveyed to Marc and Regina.

10 A Correct.

11 Q All these sessions -- I'm sorry, strike that. At that  
12 session, January 20th of 2015, two of the people have  
13 testified, I think, Val and Chris, they were on the negotiating  
14 committee.

15 A They are.

16 Q And when you talked about the 401(k), they were there,  
17 weren't they?

18 A Yes, they were.

19 Q Just give me an idea. Do you remember where that was  
20 held, where the negotiation session on January 20th was held?

21 A I believe it was in our Mineola office.

22 Q You all sat around the table? How did that work?

23 A Sat across from each other.

24 Q Across from each other. Chris and Val were next to you?

25 A To my right.

1 Q Who is that?

2 A Lou Sollicito.

3 Q So he read the summary plan description and told them what  
4 the problem was?

5 MS. LEAF: Objection. Does he know? Do we have a  
6 foundation for any questions asked?

7 JUDGE ESPOSITO: I'm assuming that he'll answer based upon  
8 what he knows.

9 THE WITNESS: I have no idea.

10 BY MR. BIANCO:

11 Q Oh, the information request, sorry to go back there, you  
12 say you didn't go to the office and look at the documents,  
13 right?

14 A Correct.

15 Q No one else from the union went their either, right?

16 MS. LEAF: Your Honor, I'm objecting to this line of  
17 questioning as it has -- if it doesn't have to do now with the  
18 summary plan descriptions, what exactly are we talking about,  
19 because it's not an info request case.

20 JUDGE ESPOSITO: I'll overrule. Go ahead, sir.

21 BY MR. BIANCO:

22 Q No one told you they went? No one from the union told you  
23 they went to look at documents, right?

24 A Correct.

25 Q Lockers. On January 8th, you pulled Marc aside and you



1 said I want to talk to you about the employee' lockers,  
2 correct?

3 A Yes.

4 Q And he told you that they were still there, they were not  
5 touched, correct?

6 A Yes.

7 Q And if the employees wanted anything, just tell him and  
8 they would arrange for them to be able to get them, right?

9 A Yes.

10 Q And he said they were still there because they're still  
11 active employees, right? Didn't he say that?

12 A I don't recall.

13 MR. BIANCO: Just one minute, Your Honor.

14 JUDGE ESPOSITO: Sure.

15 (Pause.)

16 BY MR. BIANCO:

17 Q This was not your first strike, correct?

18 A While bargaining a contract.

19 Q This was not the first time you had people, employees you  
20 represented go out on a strike, isn't that true?

21 A I don't understand the question.

22 Q How long have you been with Local 342?

23 A Over 16 years.

24 Q And right now you're vice president or executive, I  
25 apologize.

1 A Executive vice president.

2 Q In charge of contracts.

3 A In charge of contracts.

4 Q Did you start off as a business agent?

5 A Organizer.

6 Q Organizer. And so in those 16 years, have you ever been  
7 working with -- have you ever represented -- has the union ever  
8 represented a group of employees who went out on strike?

9 A Yes.

10 Q Have you, personally, ever been involved with a group of  
11 employees who went out on a strike?

12 A Yes.

13 Q So this was not your first strike.

14 A No.

15 Q Okay. And so I assume that when employees go on strike  
16 for the union or with the union, you tell them what they can  
17 expect, correct?

18 A To a certain extent.

19 Q I bet one of the first things they ask about is can I get  
20 unemployment, correct?

21 A Correct.

22 Q And you tell them, well, in New York State, you can't get  
23 it right away if you're on strike.

24 A Correct.

25 Q But you do tell them if you get discharged, you can file

1 for unemployment, correct?

2 MR. M. MILNER: Objection. Is that a question?

3 MS. LEAF: Objection. We need a foundation for these  
4 questions. Did he ask this, did he not --

5 JUDGE ESPOSITO: I'm sorry. The question was do you tell  
6 them if you are discharged, you can get unemployment?

7 MR. BIANCO: Yes.

8 JUDGE ESPOSITO: Okay.

9 MR. BIANCO: Did you tell them that?

10 JUDGE ESPOSITO: I'm overruling the objection. You can  
11 answer.

12 THE WITNESS: I don't recall ever telling anyone that.

13 BY MR. BIANCO:

14 Q Now when employees are discharged or terminated and you  
15 represent those employees, you'll do something, correct?  
16 You'll take action.

17 A I would imagine so.

18 Q If you had a contract, you file a grievance.

19 A Yes.

20 Q If you didn't have a contract, like here where you're  
21 negotiating, you file an unfair labor practice charge, wouldn't  
22 you?

23 A Yes.

24 Q You haven't filed an unfair labor practice charge saying  
25 discharge, correct?

1 MR. M. MILNER: Objection to the form of the question. Is  
2 he asking if Lou LoIacono personally filed it? Is he asking  
3 those are the words? Is he asking if the Union filed it?

4 JUDGE ESPOSITO: To the best of your knowledge, sir, did  
5 the Union ever file an unfair labor practice charge alleging  
6 that the employees were discharged?

7 THE WITNESS: Not to my knowledge.

8 BY MR. BIANCO:

9 Q I'm looking at the negotiation notes. Not once do I see  
10 you asking if they were terminated. That's true, right? You  
11 never asked if they were terminated.

12 A In my mind, they were locked out.

13 Q At some point, you did learn that the employer was taking  
14 the position that they were permanent employees, correct?

15 A That's correct.

16 Q When was that, do you recall?

17 A It was May of 2015, here in this room.

18 Q What happened?

19 A We were called for a conference and that the Board was  
20 handling the case.

21 Q And you were also told that the employer was taking the  
22 position that they had a preferential hiring list?

23 A I wasn't aware at that time that that was happening.

24 Q You did learn about that, though, correct?

25 A Eventually, yes.

1 A Yes.

2 Q And I want to turn your attention to General Counsel's  
3 Exhibit 1 and Letter E. E, yeah, there you go. Take a look at  
4 that and then as well as the attachment.

5 (Pause.)

6 BY MS. LEAF:

7 Q This charge, it was filed on January 22, 2015, correct?

8 A Yes.

9 Q Whose signature is at the bottom of the charge?

10 A Martin Milner.

11 Q Who is Martin Milner?

12 A He's our staff attorney.

13 Q Are you an attorney, Lou?

14 A Absolutely not.

15 Q And so the Union did file a charge at the NLRB?

16 A Yes.

17 Q After January 8th, correct?

18 A Yes.

19 Q And the charge references locked out employees. Who does  
20 that refer to?

21 A The members of Sparks.

22 Q The ones on strike?

23 A Who went on strike, yes.

24 Q You also testified on cross-examination that you learned  
25 at some point that Sparks has replaced employees, isn't that



1 right?

2 MR. BIANCO: I'm sorry, can you say that again?

3 BY MS. LEAF:

4 Q You testified on cross-examination you learned in May that  
5 Sparks had replaced the strikers?

6 A Yes.

7 Q The former strikers. You said you were here. Why were  
8 you here?

9 A There was a conference here.

10 Q Do you recall who was here?

11 A Marc Zimmerman. I believe Regina was present. Marty  
12 Milner. You were present, myself, and Steven Boris.

13 Q Okay. Do you recall why we were meeting?

14 A It was in regards to --

15 MR. BIANCO: Objection. He may have an understanding of  
16 why they were meeting. Why the Board wanted them to meet, he  
17 is not competent to say.

18 JUDGE ESPOSITO: What was your understanding why the  
19 parties were meeting that day?

20 THE WITNESS: That the Board was putting on a case against  
21 the employer for the locked out workers.

22 BY MS. LEAF:

23 Q During this meeting, did Sparks produce any documents?

24 A No.

25 Q Did they produce any documents about replaced strikers?

1 Q Just tell me how you had this collected. Did you do it,  
2 yourself?

3 A I don't understand your question.

4 Q In other words, you had to pull this chain, this e-mail  
5 chain together and print it out?

6 A I didn't pull anything together.

7 Q How did you get them? How did you get this chain?

8 A First of all, I'm not like a digital expert, so  
9 sometimes --

10 Q Neither am I.

11 A -- your terminology, I'm not trying to be, you know --

12 Q I know.

13 A -- uncooperative. So what I do when I retrieve an e-mail  
14 is I find the e-mail and I just print it out.

15 Q And you did that with this?

16 A This, no, I didn't print anything out. I forwarded it  
17 over to our counsel.

18 MR. BIANCO: I have no objection.

19 JUDGE ESPOSITO: General Counsel Exhibit 9 is admitted.

20 (General Counsel's GC-9 received.)

21 CONTINUED DIRECT EXAMINATION

22 BY MS. LEAF:

23 Q Ms. O'Leary, after you had this e-mail exchange with Mr.  
24 Zimmerman, General Counsel's Exhibit 9, did you do anything in  
25 response?

1 A No. This was the end of this chain and I had no more  
2 contact about this specific thing, at this time.

3 MS. LEAF: All right, I don't have any further questions.

4 JUDGE ESPOSITO: Cross-examination?

5 MR. BIANCO: One second, Your Honor.

6 (Pause.)

7 MR. BIANCO: Did she give a statement?

8 MS. LEAF: No.

9 (Pause off the record from 12:35 p.m. to 12:41 p.m.)

10 JUDGE ESPOSITO: Let's go back on the record.

11 MR. BIANCO: Ms. O'Leary, I have no questions.

12 JUDGE ESPOSITO: All right.

13 THE WITNESS: I'm done?

14 JUDGE ESPOSITO: Yes, you can leave. Thank you very much  
15 and you can be excused.

16 (Witness excused.)

17 JUDGE ESPOSITO: Let's go off the record.

18 (Discussion off the record from 12:42 p.m. to 12:42 p.m.)

19 JUDGE ESPOSITO: We're off the record until two o'clock.

20 (Whereupon, at 12:42 p.m., a recess was taken.)

21

1 Q Oh, I don't know.

2 MR. BIANCO: Do you have a tip sheet?

3 MS. LEAF: Is that the document you put in as  
4 Respondent's 1?

5 MR. BIANCO: Yeah.

6 MS. LEAF: Okay. They might, maybe, I don't know.

7 BY MS. LEAF:

8 Q You can tell me, is that the tip sheet?

9 A That's it.

10 Q Okay. Respondent's 1 is a tip sheet. And on that, the  
11 waiters are all keeping track of how many tips are being  
12 earned, correct?

13 A The waiter do not keep track on this.

14 Q Okay. Who does?

15 A Well, there's different people, but this is the most  
16 accurate piece of paper or document that shows who worked on a  
17 particular day.

18 MS. LEAF: Objection, Your Honor, motion to strike, that  
19 wasn't the question.

20 THE WITNESS: Okay, sorry. I got confused. Sorry.

21 JUDGE ESPOSITO: Okay. She was asking you who -- I  
22 believe she was asking you who prepares that document.

23 THE WITNESS: Okay. So a couple of different people  
24 prepare it.

25 BY MS. LEAF:

1 Q It's whoever the waiters are, who are in charge of  
2 counting the tips that night?

3 A No, not -- no. Do you want me to explain?

4 Q Well, you're saying that whoever keeps track of the tips  
5 on Respondent's 1 is how the numbers end up on --

6 A Right.

7 Q -- General Counsel's 13(b). Is that what you're saying?

8 A Well, the numbers correlate back to this document (b), so  
9 the numbers from this, from the tip sheet, will ultimately end  
10 up on this sheet, and then will ultimately go into payroll.

11 MR. BIANCO: Let the record reflect that Respondent was  
12 holding up Respondent -- that the witness was holding up  
13 Respondent's 1 and --

14 JUDGE ESPOSITO: And then General Counsel's 13(b).

15 MS. LEAF: Okay. But the dates don't necessarily  
16 correspond. I don't know what the date is.

17 MR. BIANCO: Oh, right, that's correct, they don't.

18 BY MS. LEAF:

19 Q So now General Counsel's 13(b), this lunch and dinner tips  
20 record, this is something that Sparks keeps weekly, this  
21 document, correct?

22 A Correct.

23 Q A record like this. And they have one weekly for every  
24 week that the restaurant is open.

25 A Correct.

1 MR. BIANCO: I would, Your Honor, if you -- if that would  
2 be alright with you.

3 JUDGE ESPOSITO: Sure.

4 MR. BIANCO: Yes and General Counsel, we've heard from  
5 General Counsel that there is a case and we've seen in the  
6 Complaint that there is a case. There's essentially two  
7 alternative theories.

8 The first is that in an e-mail of December 22<sup>nd</sup> Sparks  
9 terminated, discharged the Employees: the Waiters and the  
10 Bartenders that went out on strike.

11 The alternative theory is that Sparks failed to maintain a  
12 Preferential Hiring List and denied the Employees their Labor  
13 Law Rights to recalled off of that list.

14 Sparks response to that is that neither of those  
15 allegations are true. Here's what we think that the facts show.

16 First, there was an economic strike. There's no doubt  
17 about that.

18 Second, they hired Permanent Replacements. Sparks hired  
19 Permanent Replacements right after the second strike of December  
20 10<sup>th</sup>.

21 Further, Sparks had legitimate and substantial business  
22 justification for hiring Permanent Replacements. They didn't  
23 discharge the strikers. They didn't fail to maintain a  
24 Preferential Hiring List. And they did not fail to recall  
25 strikers off the Preferential Hiring List when there was a need



1 to hire a Waiter or a Bartender.

2 Here's one thing that they didn't do. They did not  
3 immediately tell the Union that they were permanently replaced  
4 when the Union conveyed an unconditional offer for the return to  
5 work on December 19<sup>th</sup>.

6 Now Avery Heights, one of the cases, acknowledges that  
7 you're not obligated to tell the Union. And even in the same  
8 case, the Second Circuit said there may be legitimate reasons  
9 for secrecy in the hiring of Permanent Replacements.

10 For example, the fear of picket line violence. Now General  
11 Counsel wants you to believe that somehow there's an independent  
12 unlawful reason for the decision not to tell them immediately. I  
13 think that they're saying that Sparks hired the Permanent  
14 Replacements because of the picket line violence. But that's  
15 wrong. That's not the case.

16 Legitimate and substantial business justification, running  
17 the restaurant, was why they hired the Permanent Replacements.  
18 The picket line strike violence was the reason they didn't  
19 immediately tell the Union about the Permanent Replacements. And  
20 you're going to hear evidence about that. Why fear of  
21 retaliation in the form of even more picket line strike  
22 violence? And we think that you'll hear and you'll see and we  
23 believe that you'll agree that the fear was real and the reason  
24 for not telling was reasonable.

25 Finally, we think that the evidence will show from

1 December 19<sup>th</sup> until August 25<sup>th</sup> Sparks Restaurant was properly  
2 staffed. It did not need to hire any additional Waiters and  
3 Bartenders. If I could just talk a little about those points,  
4 Your Honor.

5 Yes, I don't know if you typically will entertain a Motion  
6 to Dismiss before Respondent puts on its case. But, if so, I'd  
7 like to address that now.

8 JUDGE ESPOSITO: Well, I'll allow you to make a Motion to  
9 Dismiss, if you'd like, Mr. Bianco.

10 MR. BIANCO: The Complaint says that on or about December  
11 22<sup>nd</sup>, 2014 Respondent tells Counsel by e-mail to the Union  
12 discharge of 36 Striking Employees. Now according to the Union's  
13 own bargaining notes that was the only communication the Union  
14 had received regarding the offer to return to work.

15 The witness testimony that on January 8<sup>th</sup> Mark Zimmerman  
16 made a statement that he was protecting the Client's property is  
17 not supported by the notes and is not really credible. So, we're  
18 left with the e-mail. And I think, as General Counsel says, we  
19 should look at the general -- the reasonable person standard.  
20 But -- you know -- the reasonable person standard you look at  
21 all of the circumstances. And what are the circumstances here?

22 First of all, the e-mail alone, itself, doesn't say you're  
23 never coming back. It doesn't say absolutely not. It says at  
24 this time. Any reasonable person would inquire, well, if not at  
25 this time, when? That inquiry was never made.

1 More importantly, there's no evidence that any Employee  
2 knew about the e-mail. It was sent to the Union. And there's  
3 been no evidence that the Union ever shared it with the  
4 Employees.

5 Further, all of the other facts and circumstances will  
6 take against a reasonable person believing that communication  
7 indicated a discharge, even if they knew about it. There was  
8 never a letter saying that they were discharged. You didn't hear  
9 any Strikers come up and say they were discharged or told they  
10 were discharged. There's no testimony that the Union told them  
11 they were discharged.

12 We had evidence, the testimony, with the notes which  
13 indicate that the Employees were told that, in fact, under their  
14 401(k) they were still considered Active Employees. They'd have  
15 to sign a document saying that they weren't employed. There's no  
16 evidence any of them did that.

17 We saw the Cobra letter, which indicates that the  
18 healthcare coverage was continued. And in this we're talking  
19 about Respondents Exhibit R-2, the second letter, which  
20 corrected the first letter. The second letter indicates that the  
21 Employees had coverage through the middle of January of 2015.

22 The Union, itself, they didn't consider it a discharge.  
23 They considered it a lock out. We had testimony about that.  
24 Maybe one of the more important factors, after the December 22<sup>nd</sup>  
25 e-mail communication, they continued to bargain with the Union.

1 If you look at the notes, there was real bargaining going on.  
2 This was the Company engaging in Good Faith Bargaining with the  
3 Union, not just once, not just twice, but on several different  
4 occasions.

5 So, given all of these factors we would say that there's  
6 no evidence that the Employees were discharged. No reasonable  
7 person could believe that they were discharged. And we move to  
8 dismiss that part of the Complaint.

9 JUDGE ESPOSITO: Okay, I'm going to deny the Motion to  
10 Dismiss. I think that the parties should address the evidence in  
11 their Post-Hearing Briefs. And I'll make a Decision as to  
12 whether or not the Employees were discharged, given all of the  
13 factors that are pertinent under the cases that I cited when I  
14 was ruling on the Petition to Revoke the Respondent's Subpoena.  
15 But I don't believe that it's proper to dismiss the allegation  
16 at this point.

17 So the Motion to Dismiss is denied.

18 MR. BIANCO: I understand, Your Honor. So, let's go onto  
19 the second alternative theory. That the Complaint says that on  
20 or about December 19<sup>th</sup>, 2014 Respondent has failed and refused  
21 to reinstate any of the striking Employees. It then says, 'on or  
22 about December 19<sup>th</sup>, 2014 Respondent has denied the striking  
23 Employees their right to replace on a Preferential Hiring List.

24 So, here's what the facts will show. First of all, there's  
25 an economic strike. That's established. That's not an issue.

1           Secondly, we hired Permanent Replacements. Thirty-six  
2 Employees went out on strike. Sparks hired 34 Permanent  
3 Replacements. General Counsel has not articulated our position,  
4 did not put on any evidence that these 34 Employees were not  
5 permanent Employees. But in any event you're going to see the 34  
6 Permanent Replacement letters that will establish it.

7           Now, for the Permanent Replacements, evidence will show  
8 that Sparks had a legitimate and substantial business  
9 justification for hiring Permanent Replacements. Very simply,  
10 they had to run the restaurant during the busiest time of the  
11 year. General Counsel's witnesses have acknowledged that the  
12 holiday season, particularly December is busy, the busiest time  
13 of the year. But they really haven't explained the depth of that  
14 reality. Sales alone in December can be twice what the sales are  
15 in the slow period. We're seeing in some periods in July and  
16 August it's 800,000, whereas in December it's over 2 million.

17           And witnesses really didn't explain what it was like for  
18 the restaurant, for Steve Cetta and the Maitre D's, and the  
19 whole Staff of Sparks what it was like when the Waiters walked  
20 out on the 5<sup>th</sup>, the first strike, what the chaos was like.  
21 Imagine you're running a full house -- all of the parties are  
22 there --

23           MS. LEAF: Yes, I'm sorry. I know that he's making an  
24 Opening Statement, but we're not litigating unlawful motive for  
25 hiring Permanent Replacements. And I've explained that before,



1 during, and after. So, I don't know why any of this is relevant.  
2 But they seem to think that we're litigating that, but we're  
3 not.

4 MR. BIANCO: Well, we had asked for a stipulation on that.  
5 We didn't get one. So -- and we were told that we had to put it  
6 on.

7 JUDGE ESPOSITO: Let him continue his Opening Statement.  
8 Go ahead, Mr. Bianco.

9 MR. BIANCO: December 5<sup>th</sup>, the strike -- full house --  
10 Waiters serving Customers. They're taking drink orders. They're  
11 taking dinner orders. Some people are bringing courses out.  
12 They're bringing bills to people. They're taking back payments  
13 from other Customers. Then all of a sudden, they're gone.

14 And the people that are left, Steve Cetta and the Maître D  
15 -- nobody knows who got a drink, nobody knows if they've gotten  
16 their creamed spinach, nobody knows who's gotten a bill, nobody  
17 knows who's paid. And they have to try and go out there and make  
18 sense of all of that. And the Customers get angry. And the  
19 Customers are leaving. They are never coming back based on that.  
20 And that's the chaos that took place. It happened once.

21 And then it happened again. And so, Steve Cetta reasonably  
22 wanted to have some stability. And he hired Permanent  
23 Replacements.

24 Now, as for the Preferential Hiring List, we've looked at  
25 we've looked at General Counsel's Exhibits GC-6 and GC-7 and



1 So, with that I'd like to call our first two witnesses.

2 JUDGE ESPOSITO: Okay.

3 MR. MILNER: Could I respond to that in anyway?

4 JUDGE ESPOSITO: Just briefly, Mr. Milner.

5 MR. MILNER: Only because I -- and my memory might be  
6 wrong, but it was my recall that the Employer was not taking the  
7 position in the beginning of this case of Striker Misconduct. I  
8 thought that they said that and just for the -- I don't know  
9 whether this is a change in their position, but as far as the  
10 Union is concerned this is a fantasy that's being presented by  
11 the Employer.

12 The record is absolutely crystal clear that the Employer  
13 gave to the Union the reason for not taking anyone back was  
14 conduct. And that's it. And there was no mention of Permanent  
15 Replacements. It was never discussed many, many months later.  
16 And the Workers had every reason to believe that their rights of  
17 employment had been terminated based on these allegations and we  
18 submit to you the allegations, the alleged allegations  
19 concerning Striker misconduct are totally false.

20 JUDGE ESPOSITO: Okay -- I mean -- I just wanted to  
21 mention that in terms of the time and effort involved in your  
22 case presentation that it's also my understanding, as Ms. Leaf  
23 just stated, that there's no contention in this case that  
24 whatever Permanent Replacement Employees were hired were hired  
25 for some sort of unlawful reason. That the Permanent

1 Replacements themselves constituted a legitimate and substantial  
2 business reason -- you know -- for putting the people on the  
3 Preferential Hiring List to the extent that they were not  
4 discharged. Is that correct, Ms. Leaf?

5 MS. LEAF: Correct, because -- you know -- there's a  
6 theory where, and you've seen it under Avery Heights, where  
7 unlawful motive for hiring Permanent Replacements. That is not  
8 alleged in the Complaint and we are not litigating it. So the  
9 extent that you're going to put on evidence of how you needed  
10 help in December, I don't think that it's relevant.

11 MR. BIANCO: Okay, as I said, Your Honor, we wanted to get  
12 a stipulation on that. I don't think that General Counsel is  
13 able to stip to that.

14 MS. LEAF: The legitimate and substantial business  
15 specification is in not returning Employees to work as positions  
16 were available after the unconditional offer to return to work.  
17 It's not that did you have that justification for hiring  
18 Permanent Replacements. And I didn't know that we had to stip to  
19 it because it wasn't in the Complaint. It's not something  
20 related.

21 JUDGE ESPOSITO: This was part of the reason that I did not  
22 allow Ms. Leaf to question the witness about the statement of  
23 Mr. Kapovic in 2013 because it was my understanding that anti-  
24 union animus was not being alleged as a motivation for hiring  
25 the Permanent Replacements in the first place.

1 MS. LEAF: Not for the hiring of them.

2 JUDGE ESPOSITO: In the first place, okay?

3 MS. LEAF: Correct.

4 MR. BIANCO: Okay, so that's good. That really is good and  
5 we appreciate that.

6 JUDGE ESPOSITO: Alright, I just want to make sure that I  
7 understand what the parties' contentions are.

8 MS. LEAF: We're not saying that the Employer had an  
9 unlawful motive in hiring the Permanent Replacements at the time  
10 that they did, so.

11 MR. BIANCO: But you are saying that there's an unlawful  
12 motive in not recalling them sooner than August?

13 MS. LEAF: The legal standard, at least my understanding  
14 is, you permanently replace Economic Strikers, and then once  
15 they make an offer of return to work they have to be put on a  
16 Preferential Hiring List and that as positions were available or  
17 become available, they must be recalled.

18 So, there's a burdenship that comes into play, as my  
19 understanding, in that -- you know -- you're going to say, "I  
20 have a legitimate substantial business justification for not  
21 bringing them back at that time."

22 And shifts back to us to say, "Well, actually you didn't."

23 And that wasn't a legitimate substantial business  
24 justification.

25 MR. BIANCO: Okay, just so that I'm clear. I saw you

1 shaking your head when I was saying something.

2 MS. LEAF: Yes, it's the whole --

3 MR. BIANCO: My understanding is that General Counsel --

4 MS. LEAF: You said something about how we were alleging  
5 misconduct that --

6 MR. BIANCO: Right, because you said --

7 MS. LEAF: -- you didn't hire them back for -- we're not  
8 alleging that you hired Permanent Replacements for any given  
9 reason or that -- you know --

10 MR. BIANCO: Right -- in Avery Heights, Your Honor -- this  
11 is my concern -- in Avery Heights they said, "We kept it secret.  
12 You didn't tell them about Permanent Replacements because you --  
13 you know -- you didn't want to hiring them back."

14 Okay? And what I'm saying is we didn't tell them right  
15 away for a legitimate reason. We were worried about violence and  
16 we eventually did tell them.

17 MS. LEAF: But that doesn't have to do with the hiring of  
18 Permanent Replacements. We're not disputing the hiring.

19 MR. BIANCO: Okay, you're right.

20 MS. LEAF: Again, it's not my burden to put on permanency  
21 of replacements, which you said it was. It's not. So, I --

22 MR. BIANCO: No, I understand.

23 MS. LEAF: -- done that.

24 JUDGE ESPOSITO: Okay.

25 MR. BIANCO: Can I just -- given that -- can I have a

1 Q I turn your attention to Sparks Restaurant. Are you  
2 familiar with Sparks Restaurant?

3 A I am.

4 Q Tell us how you're familiar with it.

5 A Beau Dietl, my Chairman, along with my Company and I have  
6 been going to that restaurant for many years socially. We take a  
7 great many Clients there over the years. We eat there with our  
8 families also. Beau Dietl and Associates have had our annual  
9 holiday and Christmas party at Sparks for a number of years.  
10 We're familiar with it. We're familiar with the people that own  
11 it.

12 Q Now did there come a time that Beau Dietl and Associates  
13 was hired or employed -- I don't know the right words -- or  
14 retained by Sparks Restaurant?

15 A Yes, sir.

16 Q When was that?

17 A That was probably the second week in December of 2014.

18 Q So tell us the circumstances of how you came to be  
19 retained or how Beau Dietl came to be retained; what your  
20 involvement was, if any.

21 A Steve Cetta had called our office.

22 Q Who is Steve Cetta to your knowledge?

23 A The Owner of Sparks.

24 Q Go ahead. I'm sorry.

25 A Steve had called our office. Beau and I had a conference

1 call with him on a speaker call in my office. Steve explained  
2 that he had a labor issue. That there was Union Demonstrators  
3 and walk out by many of his Waitstaff Employees. And he was  
4 concerned that it would impede his business, as well as, he was  
5 concerned for the welfare of his Customers and --

6 MS. LEAF: Objection to hearsay.

7 JUDGE ESPOSITO: I'm sorry, sir. Is this -- are these all  
8 things that Mr. Cetta told you?

9 THE WITNESS: Yes, Madam.

10 JUDGE ESPOSITO: Okay, alright -- go ahead.

11 THE WITNESS: He was concerned for his Customers. He was  
12 concerned for his Employees that remained working. He was also  
13 concerned about his deliveries being impeded.

14 BY MR. BIANCO:

15 Q Now did you go the facility and talk to him?

16 A Yes, sir, I did.

17 Q Tell us about that.

18 A I met with Mr. Cetta. He had called me probably the day  
19 after our initial conversation. I went there.

20 An incident had taken place, where one of his Employees  
21 had --

22 MR. MILNER: I'm going to object now. We're getting into  
23 details of an incident. Is he testifying now as to the incident?

24 THE WITNESS: Yes.

25 JUDGE ESPOSITO: Sir, is this also something that Mr.



1 Cetta actually related to you? Did he tell you about this?

2 THE WITNESS: He told me about it and then I interviewed  
3 the person that was directly effected by it.

4 JUDGE ESPOSITO: So, why don't you tell us first what Mr.  
5 Cetta told you?

6 THE WITNESS: He told me that one of his people, one of  
7 his Employees had gone outside to accept a delivery because the  
8 Delivery Man was afraid to make the delivery himself. So, an  
9 Employee went out to a van to pick up a box of -- I believe --  
10 that it was a box of shrimp. He put it on his shoulder. And as  
11 he was entering the sidewalk stairway, it's actually a ladder  
12 from the gates that open up on the sidewalk, to take it down  
13 into the basement, as he was closing the gate over his head and  
14 walking down a very, very steep ladder with a box of shrimp,  
15 someone from up above had stomped and stepped forcefully on that  
16 gate causing him to fall two or three steps down the ladder.

17 I then interviewed that person when I arrived on the  
18 scene. I believe that he was a Dishwasher. His name was Enrique.  
19 He had explained to me that --

20 MS. LEAF: Objection to hearsay.

21 MR. BIANCO: Well, let me ask you a question.

22 JUDGE ESPOSITO: What's this being offered for?

23 BY MR. BIANCO:

24 Q Did -- was a police report made?

25 A Yes.

1 Q Were you involved in that?

2 A Yes.

3 Q Did you get a copy of that police report?

4 A Yes.

5 MR. BIANCO: Yes, what are we up to, Respondent's R-6?

6 JUDGE ESPOSITO: Yes.

7 MR. BIANCO: And I just got these, Your Honor. I'll have  
8 to make copies.

9 MS. LEAF: These are different?

10 MR. BIANCO: Both relate to the same incident.

11 MS. LEAF: Are these the same?

12 MR. BIANCO: I guess that there's a copy of one of them,  
13 Your Honor.

14 MS. LEAF: Well, I don't know. I'm just asking.

15 MR. BIANCO: Yes, they are.

16 MS. LEAF: So, can I keep this one?

17 MR. BIANCO: Yes, you can keep it.

18 MR. MILNER: Are these two different documents?

19 MR. BIANCO: They're two different documents. They both --  
20 I think that they both relate to the same thing.

21 BY MR. BIANCO:

22 Q Mr. Ciravolo, I'm showing you what's been marked as  
23 Respondent's Exhibit R-6 and R-7.

24 MS. LEAF: Which one is R-6 and which one is R-7, Tom?

25 MR. BIANCO: R-6 is -- and I think that it's the one that

1 you have the copy of.

2 THE WITNESS: It's referred to in the NYPD as a Police  
3 Complaint Report --

4 MR. MILNER: I'm going to object. First of all, he is --  
5 this is a police report. It contains information given to a  
6 Police Officer by a third party, which would be hearsay. If you  
7 want to authenticate the document, bring the Police Officer in.  
8 he can't testify or authenticate that somebody -- a third party,  
9 who's not in the room today, who's not a party to this action,  
10 makes comments to a Police Officer and he's going to read them  
11 into the record. That's ridiculous. It's not admissible in any  
12 forum.

13 JUDGE ESPOSITO: Okay, Mr. Milner -- sir, were you present  
14 when the police report was made? What's your knowledge of the  
15 actual report?

16 THE WITNESS: So after I spoke with the person, Enrique, I  
17 walked three blocks over to the 17<sup>th</sup> Precinct. I met with  
18 Detectives Nee and Detective Hennessy and they walked back to  
19 Sparks with me, made the report. I was active in giving the  
20 information to the report. The report was prepared. They were  
21 looking for the perpetrator, whose prints are on this other  
22 report. This was an online booking sheet of an arrest made a few  
23 days after the initial complaint report was made. The person  
24 that was responsible for the crime was not present when the  
25 Detectives went back. We all walked over together and searched

1 the property. We kept the man arrested for probably two days  
2 later.

3 JUDGE ESPOSITO: So Respondent's Exhibit R-6 is the  
4 Complaint?

5 THE WITNESS: I don't know the numbers of these, but it's  
6 attached to it. This is a Complaint.

7 JUDGE ESPOSITO: So, Respondent's R-6 is the Complaint.  
8 (Respondent's R-6 identified.)

9 JUDGE ESPOSITO: And you were present when the Complaint  
10 was made?

11 THE WITNESS: No, I was not present when it was typed up.  
12 I was there when the information was given for this report.

13 JUDGE ESPOSITO: You gave the information to the Police  
14 Officers.

15 THE WITNESS: Along with the party, who was going down the  
16 stairs.

17 JUDGE ESPOSITO: Okay.

18 MR. MILNER: Yes, the person, the alleged victim, in order  
19 to have evidence of what this other person would have said to be  
20 offered for its truth, that person would have be here. And the  
21 other question is we don't know if this other person even speaks  
22 English because he's testifying -- this is not -- in order to --  
23 you can only offer this -- if it's not hearsay and it's kept in  
24 the ordinary course of business.

25 It's not kept in the ordinary course of his business. You

1 have to bring the Police Officer in, the Police Department. And  
2 even then you would still need the alleged victim to testify as  
3 to what they said because otherwise, we're basically getting his  
4 testimony as to what he told the Police Office of someone else  
5 told him.

6 JUDGE ESPOSITO: Okay, Mr. Bianco?

7 BY MR. BIANCO:

8 Q In your experience as a Law Enforcement, since you've left  
9 the Police, is that a document that if the public asks -- if  
10 they ask for a copy of the Complaint?

11 A Yes.

12 MS. LEAF: We still object. That doesn't authenticate the  
13 information in this particular document.

14 JUDGE ESPOSITO: Okay, well -- I mean -- who obtained it?  
15 Who was it given to? It's usually given to Complainant. Is that  
16 correct?

17 THE WITNESS: Yes, but I requested it.

18 JUDGE ESPOSITO: You requested it from who?

19 THE WITNESS: I requested it from someone in the Police  
20 Department.

21 JUDGE ESPOSITO: At the time that you were meeting with  
22 the Complainant?

23 THE WITNESS: No, it's not prepared instantaneously. It's  
24 usually prepared the next day.

25 JUDGE ESPOSITO: So then you went back to the police

1 precinct and requested a copy of the Complaint?

2 THE WITNESS: I went back to a Police Officer and  
3 requested it.

4 JUDGE ESPOSITO: I don't know, Mr. Bianco. This is really  
5 sort of --

6 MR. BIANCO: I understand, Your Honor.

7 JUDGE ESPOSITO: I mean -- can the Complainant come in and  
8 testify that this was the Complaint that he filed?

9 MR. BIANCO: I'm not offering it, Your Honor.

10 JUDGE ESPOSITO: You're not going to offer it.

11 MR. BIANCO: No.

12 JUDGE ESPOSITO: Okay, go ahead.

13 BY MR. BIANCO:

14 Q So, when Beau Dietl was retained by Sparks -- did you say  
15 that you went to the restaurant?

16 A I went to the restaurant on many occasions, but I went  
17 initially when this incident took place.

18 Q What did you observe when you got there? The first time  
19 that you went there, what did you observe?

20 A I observed barriers on the sidewalk, Police barriers on  
21 the sidewalk. I observed some Demonstrators or Picketers behind  
22 the barriers on the sidewalk.

23 Q And if you recall, did they have signs? Did they indicate  
24 who they were?

25 A There weren't many of them. It was in the afternoon. I



1 think that they had some signs, some union signs of some sort.

2 Q Do you know the date that you went there?

3 A I believe, if I may refer to my notes, Your Honor?

4 JUDGE ESPOSITO: No.

5 THE WITNESS: I think that it was around December 12<sup>th</sup>.

6 JUDGE ESPOSITO: I mean -- do you want to show him notes  
7 to refresh his recollection?

8 THE WITNESS: No.

9 BY MR. BIANCO:

10 Q Now that was -- I think -- the first time that you went  
11 there. You went there other times, as well, I understand?

12 A Yes, but on that first one I interviewed the person that  
13 Dishwasher, Enrique and I was also told by Mr. Cetta that some  
14 rats were found in the bathroom.

15 MS. LEAF: Objection to hearsay.

16 JUDGE ESPOSITO: I'll allow it simply for what Mr. Cetta  
17 told the witness, not for the truth of the matter, not that  
18 there were actually rats.

19 THE WITNESS: He said that they were white rats.

20 BY MR. BIANCO:

21 Q You said that you've been to the restaurant -- the first  
22 time that I think you said was the 12<sup>th</sup>. And you were there  
23 after that?

24 A I was probably there visiting the location or being called  
25 to the location by my security personnel a dozen times during

1 the engagement.

2 Q Did the Beau Dietl engagement by Sparks end at some point?

3 A It did.

4 Q When was that, if you recall?

5 A Maybe about the third week of January, the middle of  
6 January. And then we did one more day in February. I don't  
7 recall, obviously, why we were called upon. We went on another  
8 day of security there.

9 Q In these other times that you visited the site or were at  
10 the site describe what you saw, what you heard, if anything?

11 MR. MILNER: I'm going to object, unless he's going to ask  
12 specific dates and times. It's very general.

13 JUDGE ESPOSITO: That's a fair point. Do you want to ask  
14 him specifically whether he's talking about during the period  
15 that the firm was engaged, which ended in January of 2015 or the  
16 one day in February?

17 MR. BIANCO: Okay, that's fair.

18 JUDGE ESPOSITO: When it occurred.

19 BY MR. BIANCO:

20 Q Let's talk about from the beginning of the time that Beau  
21 Dietl was retained until the time that it ended, not counting  
22 one other time that you were called back.

23 A I had been to the location on a number of occasions to --

24 Q Focus on what you saw and what you heard, if anything.

25 A Well, let me start with December 19<sup>th</sup>. I recall that

1 because that was the evening of Beau Dietl Christmas Party,  
2 Holiday Party, at Sparks. We had 105 guests. Many of those  
3 guests were Government Officials, CEO's, important Clients,  
4 Partners in Law Firms. So, what we did was -- when I arrived I  
5 saw that there were a number of Picketers out there. They had  
6 the horns.

7 Q What horns?

8 A They had these long plastic horns that you see at these  
9 international soccer games that emanate a very loud piercing  
10 sound. They had whistles. They had signs.

11 When I would get out of the car and the car that I came  
12 out of was complacent. It looks almost like a squad car. It says  
13 'Beau Dietl and Associates'. It has a roof light rack for  
14 Emergency Responders.

15 And -- you know -- they would just be harassing, loud.

16 MS. LEAF: Objection.

17 THE WITNESS: I would be cursed at.

18 MS. LEAF: Objection.

19 JUDGE ESPOSITO: Okay, sir, if you could just tell us  
20 specifically what you saw and heard without characterization,  
21 such as harassing that would be helpful.

22 THE WITNESS: I had the horns blown in my -- the horns  
23 blown very close to my face. I had whistles.

24 BY MR. BIANCO:

25 Q How close?

1 A As close as they could get. They would lean over the  
2 barricade and put it within inches of your face.

3 Q Okay, go on. I'm sorry.

4 A They would blow whistles in the same manner. They would  
5 use profanity of various degrees, most of it not socially  
6 acceptable language.

7 MS. LEAF: Yes, I would object to the relevance of this  
8 line of questioning. It's my understanding that if you're  
9 talking about misconduct there has to be a level of seriousness.  
10 And I am not kind of sure what this testimony is being offered  
11 for.

12 JUDGE ESPOSITO: Okay, I'm going to allow the testimony.  
13 Again, if you're to -- again, the more specific testimony that  
14 you can give with respect to your actual observations, the more  
15 helpful the testimony will be.

16 MR. MILNER: Just for the record we want to object to the  
17 characterization of the word 'socially acceptable'.

18 MS. LEAF: Unacceptable?

19 JUDGE ESPOSITO: I understand.

20 THE WITNESS: Yes, may I say what I recall?

21 JUDGE ESPOSITO: Yes, of course, you can use whatever  
22 words that you heard.

23 THE WITNESS: So, I won't use socially acceptable. But I  
24 will say that I was called a "Bald headed Mother Fucker", and  
25 things of that nature.

1 BY MR. BIANCO:

2 Q Did you observe how Customers had to enter the restaurant  
3 when you were there? What did you see?

4 A There were barriers on both sides of the entry door. And a  
5 -- I guess maybe a five foot pathway, where people or Customers  
6 or anyone entering the restaurant would get out of the car in  
7 the roadway to walk onto the sidewalk. And the demonstrators  
8 would be on each side.

9 Q On each side of the barricade?

10 A Right, on each side of the barricade and allowing a  
11 pathway, but on many occasions --

12 Q Occasions that you saw?

13 A Yes, on many occasions during my many visits that the  
14 pathway would become narrower and narrower. They would push  
15 them.

16 Q Who would push them?

17 A The demonstrators -- they would push them closer.

18 Q Push the barricades?

19 A Yes, they would push them so that the passageway would  
20 become very narrow.

21 Q How narrow?

22 A It started out at five feet. It became four feet or three  
23 feet.

24 Q And so what impact, if any, did it have on Customers?

25 MS. LEAF: Objection, this witness can't testify about the

1 Customers.

2 JUDGE ESPOSITO: Yes.

3 BY MR. BIANCO:

4 Q Did you observe any impact on Customers trying to come in  
5 through that path?

6 A Yes, I did.

7 Q What did you observe?

8 A I observed on the night of December 19<sup>th</sup> I made many stops  
9 outside because our invited guests were coming in and out. So I  
10 just didn't stay at the party. I was also concerned with their  
11 well-being as they entered and exited. So I personally observed  
12 that passageway become narrow and then I would direct my  
13 personnel to push it back.

14 By the way, on the night of the 19<sup>th</sup> we bolstered the  
15 security there because of our party. So, we added security  
16 personnel that night.

17 MR. BIANCO: I have nothing further, Your Honor.

18 JUDGE ESPOSITO: Any cross examination, Ms. Leaf?

19 MS. LEAF: May I have a few minutes off the record,  
20 please?

21 JUDGE ESPOSITO: Sure, let's go off the record.

22 (Whereupon, at 12:52:21 p.m., a break was taken.)

23 JUDGE ESPOSITO: On the record; 1:03:09 p.m. Ms. Leaf,  
24 cross examination?

25 MS. LEAF: The General Counsel doesn't have any cross



1 most up to date payroll that we received pursuant to the  
2 subpoena.

3 JUDGE ESPOSITO: Okay. And so is the Respondent willing  
4 to stipulate that what, there were no changes in employment?

5 MS. LEAF: Yeah, let me -- let me clarify. There was no  
6 change in employment, except for an employee named Ian  
7 Morrison, who was given a termination letter effective August  
8 25, 2015, and we have testimony in the record that Respondent  
9 has put Mr. Ante Ivre into Mr. Morrison's spot. And so other  
10 than Mr. Morrison and that change, you know, we're willing to  
11 stip that from April -- at least April until this date in  
12 September 2015 there weren't any staffing changes to waiters  
13 and bartenders.

14 JUDGE ESPOSITO: Okay. Is the Respondent willing to enter  
15 into that stipulation?

16 MR. BIANCO: That's accurate, Your Honor.

17 JUDGE ESPOSITO: Okay.

18 MS. LEAF: If I missed something, it's on me.

19 JUDGE ESPOSITO: All right, the stipulation is received.

20 Anything else before we continue with Respondent's case?

21 (No response.)

22 JUDGE ESPOSITO: All right, so if there's nothing further,  
23 Mr. Bianco, would you like to call your next witness?

24 MR. BIANCO: Yes, I would call but actually for this  
25 witness, Ms. Faul is going to question her.

1 JUDGE ESPOSITO: Okay.

2 MR. BIANCO: I haven't had a chance to talk to the  
3 witnesses.

4 JUDGE ESPOSITO: All right, good morning. All right, so  
5 the Respondent has called Susan --

6 MS. EDELSTEIN: Yes.

7 JUDGE ESPOSITO: -- Edelstein.

8 MS. EDELSTEIN: Yes.

9 JUDGE ESPOSITO: Okay. Ms. Edelstein, let me just swear  
10 you in, again.

11 MS. EDELSTEIN: Okay.

12 JUDGE ESPOSITO: Can you raise your right hand, please.

13 (Whereupon,

14 SUSAN EDELSTEIN,

15 was called as a witness by and on behalf of Respondent and,  
16 after having been duly sworn, was examined and testified as  
17 follows:)

18 JUDGE ESPOSITO: Okay, thank you. And can you just spell  
19 your name again for the record --

20 THE WITNESS: Sure.

21 JUDGE ESPOSITO: -- to make sure we get it correctly.

22 THE WITNESS: Sure. Susan, S-U-S-A-N, E-D-E-L-S-T-E-I-N.

23 JUDGE ESPOSITO: Okay, go ahead, Mr. Bianco. Oh, I'm  
24 sorry, Ms. Faul.

25 MS. FAUL: It's okay, thank you.

1 A I was not.

2 Q Okay. Did you return to the restaurant sometime after  
3 December 10th?

4 A I did; on December 11th.

5 Q Were you charged with any duties in regards to hiring  
6 employees?

7 A Yes, I was.

8 Q What duties were you charged with?

9 A In the responsibility of finding candidates and  
10 interviewing them and going through the process of hiring  
11 waiters.

12 Q Okay. So can you tell me what you did?

13 A We reached out to --

14 Q Just what you did.

15 A Oh, okay, sorry. I contacted staffing agencies that we  
16 had relationships with. They arranged to have candidates come  
17 to the restaurant and I was present there and did a series of  
18 many, many, many interviews in the course of the day. Offered  
19 people positions, and staffed accordingly. We got -- you know,  
20 referrals from managers, other waiters, they would bring, you  
21 know, people in, trying to make recommendations of people that  
22 they felt would be qualified and able to be able to start  
23 working immediately.

24 It was, you know, that's what we -- that's what we did.

25 So it was a very long but we -- very long day but that's how we

1 handled it.

2 Q And were any of the employees offered positions that you  
3 interviewed?

4 A Yes.

5 Q How many people did you hire?

6 A I don't remember exactly on the first day. But you know,  
7 on that first day; and then there were others that came. We  
8 also, you know -- I don't remember exact numbers, I'm sorry.

9 Q Did you -- how long did it take to hire employees?

10 A It was a number -- it was over the course of a few days.

11 Q Okay. Did there come a time when you provided any  
12 employees with letters?

13 A Yes.

14 Q What letters did you provide them with?

15 A With permanent replacement letters.

16 Q Okay.

17 MS. FAUL: If, Your Honor, I could take a moment just to  
18 mark some documents?

19 JUDGE ESPOSITO: Sure. Let's go off the record.

20 (Whereupon, a brief recess was taken.)

21 JUDGE ESPOSITO: Back on the record.

22 MS. FAUL: Okay, Your Honor, I would like to mark some  
23 documents for evidence, it's 7(a) through (hh).

24 (Respondent's R-7(a-hh) marked.)

25 JUDGE ESPOSITO: Ms. Faul?

1 MS. FAUL: Just marking your set, Your Honor.

2 JUDGE ESPOSITO: Okay.

3 (Pause.)

4 DIRECT EXAMINATION (continued)

5 BY MS. FAUL:

6 Q So Ms. Edelstein, do you have a set of documents in front  
7 of you?

8 A I do.

9 Q Can you look through this set of documents as a group and  
10 tell me if you recognize the document?

11 A Yes, I do.

12 Q What are those documents?

13 A These are permanent replacement letters to wait -- for a  
14 position of waiters.

15 Q Did you have anything to do with creating this document?

16 A Yes. I helped prepare this document. And I was involved  
17 in making sure that they were completed and distributed  
18 properly.

19 Q Okay. So were you involved in preparing each of the  
20 documents?

21 A Each of the documents. Shailesh and I took care of  
22 preparing them properly together.

23 Q Is that your signature at the bottom?

24 A No, it's not, it's Shailesh.

25 Q Do you know whose signature that is?

1 A sorry. Shailesh Desai.

2 Q And on the first document, (a), that you're looking at,  
3 there's another name at the bottom.

4 A Um-hmm.

5 Q Whose name is that?

6 A That's Ian Morrison's name.

7 Q Do you know how that name got there?

8 A He signed the letter.

9 Q Did you see him sign the letter?

10 A No, I don't think I did see him sign the letter. But he  
11 brought a signed letter in -- back to the office.

12 Q Okay.

13 MS. LEAF: Regina, what exhibit number are we --

14 MS. FAUL: Seven.

15 MS. LEAF: So it's 7(a) through --

16 MS. FAUL: (a) through (hh).

17 MS. LEAF: It's (a) through (hh)?

18 MS. FAUL: It's goes (a) through (z), and then starts (aa)  
19 again.

20 MS. LEAF: All right.

21 BY MS. FAUL:

22 Q So you take -- looking at the first document that's 20 --  
23 Respondent's 7(a).

24 A Correct.

25 Q Okay. Can you tell me who that document was sent to?



1 A Ian Morrison.

2 Q Okay. And was this -- so these documents delivered -- how  
3 were these documents delivered to the individuals?

4 A They were handed out.

5 Q Okay. Are -- did -- are these documents kept in the  
6 normal course of business?

7 A They are.

8 Q And were they -- did you find these documents?

9 A Yes, I did.

10 Q Where did you find them?

11 A In the files at Sparks Steakhouse.

12 MS. FAUL: Your Honor, I would offer that each of the  
13 documents is basically the same document, with perhaps a  
14 different date. I can go through each and every document, or I  
15 can move the documents into evidence.

16 JUDGE ESPOSITO: I think you can just move them into  
17 evidence as a group.

18 MS. LEAF: Can I just Voir Dire?

19 JUDGE ESPOSITO: Of course.

20 MS. LEAF: Okay.

21 VOIR DIRE EXAMINATION

22 BY MS. LEAF:

23 Q So I just want to make sure I -- so you said that you  
24 handed these to the individual employees.

25 A Yes.

1 Q Okay. You personally did it?

2 A Yes.

3 Q And then you saw them sign or you didn't see them sign?

4 A They -- I gave it to them, so they -- I didn't see them  
5 sign, but I handed it out and they returned it signed to us.

6 Q Okay. And did you give it to them on the date that's on  
7 it? Or you -- they signed it on the date that's on it?

8 A You know, I don't -- I can't -- I know. I --

9 Q And it's your understanding that each of these documents  
10 to each of the employees was done in the same way?

11 A Yes.

12 Q But it's not like one was mailed or one was --

13 A No one was -- no, none were mailed.

14 Q Okay. So they were all done in person?

15 A Yes.

16 Q Okay.

17 MS. LEAF: Can we -- just off the record, so that I have  
18 it -- because these are not marked, so that I know that I don't  
19 have any out of order and I know the exhibit numbers? We can  
20 go off and you can tell me so I can, like, write it down?

21 MS. FAUL: Sure.

22 JUDGE ESPOSITO: Let's go off the record.

23 (Whereupon, a brief recess was taken.)

24 JUDGE ESPOSITO: Back on the record.

25 Okay, go ahead.

1 Q Did all of those individuals accept the job?

2 (Witness examined the document.)

3 THE WITNESS: Yes, they did.

4 BY MS. FAUL:

5 Q Did each of those individuals accept a permanent  
6 replacement job?

7 A They did. Yes.

8 Q And do you recall the last day that you received any of  
9 these documents returned to you?

10 A I know that the last person -- I don't it. It was -- you  
11 know, whenever it was issued, it was within a day or so that we  
12 got them back. So whenever the last one was issued is when I  
13 got it back. I don't know the exact last day. I think it was  
14 -- let me just take -- can I just look at something?

15 Q Sure.

16 A Thanks.

17 (Witness examined the document.)

18 THE WITNESS: It was -- I believe it was the 19th of  
19 December. The last day that we got this one -- these back.

20 MS. FAUL: Okay.

21 MS. LEAF: Sorry, did she say the date?

22 MS. FAUL: She did.

23 MS. LEAF: What was it?

24 MS. FAUL: Her response was "I believe it was December  
25 19th."

1 BY MS. FAUL:

2 Q I'm going to ask you to look at some documents, some other  
3 documents. They have been marked into evidence --

4 MS. FAUL: If I could just take one moment?

5 JUDGE ESPOSITO: Sure. Let's go off the record.

6 (Whereupon, a brief recess was taken.)

7 JUDGE ESPOSITO: Back on the record.

8 DIRECT EXAMINATION (continued)

9 BY MS. FAUL:

10 Q Ms. Edelstein, do you know if there were any other  
11 employees that were hired after December 19th?

12 A Yes, there was. There was one -- there was one gentleman  
13 that was hired who was hired without authorization from  
14 management but by one of the managers. And he was brought in  
15 and he worked and then we -- he -- then he worked for like a  
16 week.

17 Q Okay. When you say "Without authorization from  
18 management," what did that mean?

19 A It means that after the -- after the waiters went out on  
20 strike, we knew that there was the idea of, you know, that of  
21 preferential hiring and we knew that we would need to, after we  
22 made the permanent replacements, we would -- you know, we would  
23 need to do that, and follow that list. And the -- one of the  
24 managers or maître d's who had previously been in a position to  
25 be able to hire, this gentleman came into the restaurant and he

1 A This document is the lunch and dinner tips. That's --  
2 represents all of the waiters and bartenders who worked on --  
3 during that week and what their tip cut was.

4 Q Okay. And if you could take a look at Exhibit Respondent  
5 1? What is that document?

6 A This is the daily tip sheet for lunch and dinner.

7 Q What period of time is that for?

8 A For the day, Monday, December 8, 2014.

9 Q And do you know if -- okay. Are there other documents  
10 similar to this?

11 A Yes. There's one of these every day that the restaurant  
12 is open.

13 Q And what does that represent?

14 A What this represents is the number of waiters who worked.  
15 It's a record of how -- of the number of waiters who worked  
16 that day, the tips that were earned that day, and then the tip  
17 cut. And it's used to feed -- they feed into payroll, and it's  
18 for the bartenders and for the waiters. So it shows how  
19 many -- how many people were needed on that day.

20 Q Okay.

21 MS. FAUL: So, Your Honor, and General Counsel, Rebecca, I  
22 have more documents, and they're somewhat voluminous and I  
23 would like to put them into the record -- identify and put  
24 them -- then eventually put them into the record, but I want to  
25 do that the least cumbersome way. So I can provide the

1 Q So go ahead.

2 A Just to -- so Steve and I needed to understand the -- you  
3 know, what -- what it meant that somebody was brought in, not  
4 on the list.

5 Q Um-hmm.

6 A Once we determined that we -- you know, we terminated his  
7 employment.

8 Q Okay.

9 A And --

10 Q So did you personally terminate him? Or someone else?

11 A I did not.

12 Q Okay. Do you know who did?

13 A I don't -- I don't know who did.

14 Q Okay. And did you give him a letter of termination?

15 A I did not.

16 Q Okay. And do you know if a letter was given to him?

17 A I do not.

18 Q You don't know or you --

19 A I do not know if the letter if given to him.

20 Q Okay. And you terminated him because he was not on the  
21 preferential rehire list; is that right?

22 A He was not. Yeah.

23 Q Okay. But after you terminated him from this waiter job,  
24 who did you offer his position to on that preferential rehire  
25 list?



1 A He wasn't -- he wasn't -- you know, I don't --

2 Q Did you offer it to anybody?

3 A No, we didn't need -- we didn't need more waiters.

4 Q Okay.

5 A He was hired and we didn't need anybody.

6 Q Okay. The question is --

7 MS. LEAF: I move to strike the answer.

8 BY MS. LEAF:

9 Q The question is just --

10 MS. FAUL: I would object to moving to strike --

11 JUDGE ESPOSITO: No, all right, I'm not going to strike  
12 the answer.

13 BY MS. LEAF:

14 Q Did you hire anyone off the preferential rehire list upon  
15 learning in February 2015 that Jonathan was hired and was not  
16 on the list?

17 A We --

18 Q Yes or no.

19 MS. FAUL: Objection.

20 MS. LEAF: Your Honor, this is cross-examination.

21 JUDGE ESPOSITO: Directing the Witness to ask -- to answer  
22 yes or no; the Witness will answer the question as she sees  
23 fit.

24 JUDGE ESPOSITO: No, I mean she --

25 No one was hired?

1 THE WITNESS: No one was hired. No one should have been  
2 hired. We didn't need anybody.

3 MS. LEAF: That's not the question, Your Honor, and I'm  
4 going to move to strike the answer.

5 JUDGE ESPOSITO: The question is -- the question is after  
6 Mr. Stroom, I think it is --

7 THE WITNESS: Strum, yeah.

8 JUDGE ESPOSITO: Strum was discharged, did you hire anyone  
9 off the preferential hiring list in order to replace him?

10 THE WITNESS: No.

11 MS. LEAF: Okay.

12 BY MS. LEAF:

13 Q And the preferential rehire list is also known as a  
14 Laidlaw list; is that what you're familiar with?

15 A Yes.

16 Q Okay. And the preferential rehire list that Sparks has is  
17 an attachment to General Counsel's Exhibit 6; is that right?

18 JUDGE ESPOSITO: Do you have --

19 THE WITNESS: I do. Yes, okay.

20 MR. BIANCO: How much more do you have? Can I just run to  
21 the men's room?

22 JUDGE ESPOSITO: Do you have a --

23 MR. BIANCO: If she has one or two questions I'll wait.

24 MS. LEAF: I don't have a few more questions.

25 MR. BIANCO: I drank all my water.

1 MS. LEAF: I have a few more questions.

2 JUDGE ESPOSITO: All right, why don't we take a break?

3 Why don't we take a five-minute break. Okay, let's go off the  
4 record.

5 (Whereupon, a brief recess was taken.)

6 JUDGE ESPOSITO: Back on the record.

7 CROSS-EXAMINATION (continued)

8 BY MS. LEAF:

9 Q So we were talking about the preferential rehire list --

10 A Right.

11 Q -- and I referred you to General Counsel Exhibit 6, the  
12 second page, which is entitled "Preferential Rehire List."

13 This is Sparks' *Laidlaw* or preferential rehire list; correct?

14 A Correct.

15 Q Okay. It's judged based on seniority; isn't that right?

16 A Correct.

17 Q Okay. And seniority being the hire dates?

18 A Correct.

19 Q Okay. And is seniority used for anything else in the  
20 restaurant, to your knowledge?

21 A Not that I know of.

22 Q Okay. And Sparks keeps a record of the date of hire of  
23 each employee that it has in its employment; correct?

24 A Correct.

25 Q Okay. And they keep that in the ordinary course of

1 JUDGE ESPOSITO: No, I'll allow it.

2 Go ahead.

3 THE WITNESS: I did -- I did say that, but it didn't mean  
4 that, like, in the case of Joanna, it's not -- her name's not  
5 on this list.

6 BY MS. FAUL:

7 Q And are the names of the striking employees on that list?

8 A They are not.

9 Q To your knowledge, have any of the striking employees'  
10 employment been terminated?

11 A It has not been terminated.

12 Q Are there circumstances where an employee may not be on  
13 either one of the dinner tips or the tip sheet, and that  
14 individual is still an employee?

15 MS. LEAF: Can we -- can we know what you're referring to,  
16 because I don't know what the dinner tips is.

17 JUDGE ESPOSITO: She's referring to the lunch and --

18 MS. FAUL: GC-13 --

19 JUDGE ESPOSITO: -- dinner tips spreadsheet.

20 MS. FAUL: -- (b).

21 MS. LEAF: That's lunch and dinner tips.

22 MS. FAUL: Lunch and dinner tips.

23 MS. LEAF: I'm just trying to clarify.

24 MS. FAUL: And tip sheets.

25 THE WITNESS: So you're asking if there's a circumstance

1 over the last five years would not and do not include Joanna  
2 because she does not work the dinner shift.

3 So her name doesn't appear on those. She will appear  
4 on lunch schedules, she'll appear on the lunch and dinner tip  
5 record, but she will not appear on the schedule which is  
6 General Counsel's Exhibit 13(a) that they were using to show  
7 this.

8 MS. FAUL: All right. I just want to make sure that  
9 - - I agree with Rebecca and her statements. I just wanted to  
10 make sure you knew which document was the dinner schedule. And  
11 Rebecca cleared that up with 13(a).

12 JUDGE ESPOSITO: All right. Okay.

13 MS. LEAF: Okay. And then the - -

14 JUDGE ESPOSITO: That stipulation will be received  
15 then.

16 MS. FAUL: Yes.

17 MS. LEAF: And then the last off the record  
18 discussion that the General Counsel and the Respondent had this  
19 morning was about the ongoing summaries and potential  
20 stipulations on documents.

21 And what we've decided is, is that, well the General  
22 Counsel is going to enter into evidence the underlying  
23 documents for its summary. And I'm currently marking them as  
24 General Counsel's Exhibit's 39 through 44.

25 And I'm going to be entering just the lunch and

1 dinner tip record for one week of every month for the last five  
2 years. Respondent is going to be offering its own lunch and  
3 dinner, the columns tip sheet for the corresponding weeks.

4 And so that's how we've decided to handle the  
5 documents and, you know, neither party at this time is  
6 stipulating to the summaries that the other party has created.

7 And I will have the documents prepared. There will  
8 be a few things that on the record I want to go over with you  
9 in terms of some date typos and redactions on the sheets that  
10 we can discuss before they go in.

11 MR. BIANCO: Okay.

12 MR. ZIMMERMAN: That's not entirely accurate. We  
13 would stipulate to the summaries. We are going to ask that the  
14 Judge receive our summary - -

15 MR. BIANCO: Right.

16 MR. ZIMMERMAN: - - of our documents. I have no  
17 problem other than with the points that I brought out to  
18 General Counsel a couple of days back as to discrepancies with  
19 her summary.

20 I have no problem with her entering her summary. I  
21 think it's accurate. I think ours is accurate. It would be  
22 helpful in instruction for the Judge, so she doesn't need to go  
23 through, you know, five years of sheets.

24 But if the General Counsel doesn't want to enter  
25 hers, that's fine as well.



1           As I had told Ms. Leaf earlier in the event that the  
2 parties are not able to close the record today, because there  
3 are additional documents that they need to review and perhaps  
4 offer or object to, we can leave the record open for that  
5 specific purpose.

6           The witnesses, we have to finish the witnesses today.  
7 You got to ask whatever you want to ask, whoever you want to  
8 ask it today. But the documents, if you want to leave the  
9 record open, we can do that.

10          In that event, I want the parties to agree on a date  
11 for the submission of whatever additional documentation they  
12 want to enter into the record.

13          As opposed to - - whatever you want to attach to your  
14 brief, turn in with your brief. But if we can't close the  
15 record today because there are additional documents that the  
16 parties need to deal with, then I want the parties to agree on  
17 a date by which they're going to do that.

18          And then we can close the record on that date. Okay?  
19 Anything else, Ms. Leaf?

20          MS. LEAF: Not at this time.

21          JUDGE ESPOSITO: Okay. All right. Mr. Bianco, do  
22 you want to call another witness?

23          MR. BIANCO: Yes, Your Honor. Just give me a moment.

24          JUDGE ESPOSITO: Sure.

25          MS. FAUL: Your Honor, can we go off the record for a

1 A They're a client of the firm.

2 Q Did you work with them?

3 A I did.

4 Q Okay. I want to direct you - - you heard testimony about  
5 bargaining session. I want to direct your attention to a  
6 bargaining session of January 20<sup>th</sup> of 2015. Do you recall that  
7 - - a bargaining session of 2015?

8 A I do.

9 Q Who was there?

10 A For the employer, it was a bargaining session between  
11 Sparks and Local 342.

12 For the employer, it was myself, my partner, Regina Faul,  
13 Steve Cetta from Sparks and Susan Edelstein, HR consultant for  
14 Sparks.

15 For the Union, Lou Loiacono, Steven Borris and Ms.  
16 Martinez. I believe a business agent, Carolina Martinez, Val  
17 Hajdini, I think is his last name and Chris Fuller.

18 Q Did you have a conversation about the 401(k)?

19 A Yes.

20 Q Tell me about that. What was said?

21 A At the session, Lou Loiacono asked me, asked Sparks to  
22 produce a copy of the summary plan description, the SPD for the  
23 Fidelity 401k) plan for Sparks' waiters and bartenders.

24 Q Did you respond?

25 A I did.

1 Q What did you say?

2 A I said, "Okay. What's the bargaining purpose for it?"

3 Q And what did he say?

4 A And Lou said to me, "Well the employees," or the men I  
5 think he said, made calls to the Fidelity administrator wanting  
6 to take money out of their 401(k).

7 And that the Fidelity administrator told them that they -

8 -

9 MS. LEAF: Objection. Hearsay.

10 JUDGE ESPOSITO: I'll allow it.

11 MS. LEAF: I also object to the relevance of this  
12 questioning. I'm not sure where we're going.

13 JUDGE ESPOSITO: No, there's been testimony by  
14 employees about the status of their - - well, whether they  
15 would be able to withdraw money from their 401(k) accounts.

16 MS. LEAF: You mean by the General Counsel or if  
17 anybody?

18 JUDGE ESPOSITO: I'm sorry?

19 MS. LEAF: It wasn't - - I mean, I didn't ask  
20 employees about this.

21 JUDGE ESPOSITO: Well, I don't know who asked. But  
22 there has been testimony about the 401(k) plan and the employee  
23 status.

24 And I believe there were letters put in about the  
25 employees having experienced a qualifying event that -

1 MS. LEAF: That's health insurance. That's  
2 different.

3 MR. MILNER: That was COBRA.

4 JUDGE ESPOSITO: Oh, I'm sorry. That's for COBRA.

5 MR. MILNER: Yeah.

6 JUDGE ESPOSITO: I'm going to allow it. So go ahead,  
7 Mr. Bianco.

8 THE WITNESS: Is that - -

9 JUDGE ESPOSITO: Oh, no, I thought he was going to  
10 ask another question.

11 MR. BIANCO: Yeah.

12 THE WITNESS: I was, I was answering.

13 JUDGE ESPOSITO: Oh, okay. Go ahead.

14 THE WITNESS: So to continue my answer.

15 BY MR. BIANCO:

16 Q Continue your answer.

17 A And the Fidelity Administrator had told the employees that  
18 they couldn't withdraw funds from their 401(k) because they had  
19 not been terminated. And they couldn't do so unless they were  
20 terminated.

21 Q Did you say anything after that?

22 MR. MILNER: And just to clarify, are we getting  
23 after the truth of the matter asserted?

24 JUDGE ESPOSITO: I'm sorry?

25 MR. MILNER: Is that being admitted for the truth of

1 the matter asserted? By hearsay by - -

2 JUDGE ESPOSITO: He's describing what happened at  
3 negotiations. So go on, Mr. Zimmerman.

4 Q What happened?

5 A What do you mean what happened?

6 Q Did you say anything?

7 A Yes. I said, "Which employees called Fidelity?

8 Q Did you get a response?

9 A Yeah. Lou said, "All of the employees. Let's just say  
10 all of the employees."

11 Q Did you say anything after that?

12 A I said, "Okay, I can check into it. It's not a surprise  
13 to me what you're saying because these employees are still  
14 active employees. However, I can check into it.

15 Although I'm not sure how helpful I can be because the  
16 401(k) is not a Sparks' fund. It is a fund that is maintained  
17 on behalf of each of the employees so they can probably get the  
18 best information."

19 MR. BIANCO: No further questions, Your Honor.

20 JUDGE ESPOSITO: Okay. Ms. Leaf, any cross  
21 examination?

22 MS. LEAF: Just a minute, please.

23 JUDGE ESPOSITO: Mm mmm.

24 MS. LEAF: Can we go off the record for a couple of  
25 minutes?

Regina E. Faul

**From:** Marc Zimmerman  
**Sent:** Thursday, February 05, 2015 4:13 PM  
**To:** Jhana Branker  
**Cc:** Lisa O'Leary; Lou Loiacono; Lou Sollicito; Regina E. Faul  
**Subject:** RE: Sparks Bargaining Information Request - SPARKS STEAK HOUSE'S RESPONSES AND OBJECTIONS  
**Attachments:** CPR100\_2008\_SPD.PDF

Exh. No. 603 Received ☒ Rejected ☐  
 Case No.: \_\_\_\_\_  
 Case Name: SPARKS  
 No. Pgs: 4 Date: 12/9/15 Rep.: Bar

Hi Jhana,

Please forward this response to the union's information requests to Rich:

Rich,

Following are Sparks Steak House's ("Sparks") responses and objections to the union's requests for information you e-mailed to me on January 9, 2015 (the "Requests"). Of course, to the extent the union wishes to do so, Sparks is prepared, and willing, to bargain in good faith over the Requests and its objections and responses thereto, and will supplement its responses if further responsive information becomes available to it.

Sparks will make available to the union for inspection and review documents responsive to the Requests at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods. Alternatively, if the union would prefer hard copies of the thousands of responsive documents, please so advise and we will arrange for printing and delivery at the union's expense. Of course, since the information contains employee payroll and other proprietary information, Sparks would require the union and its representative(s) to execute a standard confidentiality and non-disclosure agreement relating to such information.

General Objections:

A. Sparks objects to the Requests to the extent they are not made in good faith, but rather to annoy, harass and cause Sparks the unnecessary expenditure of time and resources to respond to requests that are not related to the performance of the union's statutory duties as bargaining agent. For example, the Requests seek documents relating back to July 2010 -- three years prior to the union's certification as the representative for the bargaining unit and copies of long-settled lawsuits concerning allegations of sexual harassment.

B. Sparks objects to the Requests to the extent they are not relevant, reasonably necessary or even directly related to the union's function as bargaining representative. In fact, the union has made clear that it intends to have an outside attorney (who has represented Sparks' employees in a prior wage and hour lawsuit, but has no role in the parties' collective bargaining negotiations) to review the requested information, presumably to provide improper pre-litigation discovery in connection with a future wage claim against Sparks.

C. Sparks objects to the Requests to the extent they are grossly overbroad and seek information: (i) for periods far predating the union's certification as collective bargaining representative for the bargaining unit; (ii) for individuals outside the bargaining unit. Accordingly, as an accommodation, Sparks has compiled many thousands of documents responsive to the Requests: (a) from the period beginning with and following the union's certification as representative of the bargaining unit; and (b) redacted same to exclude information that did not relate to bargaining unit employees, each as set forth in the specific responses below.

D. Sparks objects to the Requests to the extent they are made in bad faith solely for the purpose of harassing Sparks and Sparks' employees and customers.

E. Sparks objects to the Requests to the extent they require Sparks to create new documents and/or compilations out of existing information.

Specific Responses and Objections:



Request 1. Three years prior to the date of recognition all payroll records and copies of timecards to match the payroll records. All videos of all of the wait staff and bar staff punching in and out to work.

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 1 at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

Request 2. A copy of all payroll records pertaining to each employee to include the following:

a. Hours worked, the rate that was paid for the hours worked

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 2a at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

b. All overtime hours for each week and the rate that was paid for all overtime hours

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 2b at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

c. All vacation reimbursements and the rate that was paid for vacation reimbursements

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 2c at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

d. All call-in pay that each employee received and the rate they received for it

Response and Objections: Subject to the General Objections above, Sparks has no documents responsive to Request 2d.

e. All paid time off excluding vacation and the rate of pay that was paid for it

Response and Objections: Subject to the General Objections above, Sparks has no documents responsive to Request 2e.

f. A list from the company of all tip credit per hour the company took for each employee

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 2f at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

g. A list from the company of all meal credits the company took for each employee

Response and Objections: Subject to the General Objections above, Sparks has no documents responsive to Request 2g.

h. All party contracts going back three years prior to the recognition determining the gratuity for each party contract and whether the gratuity was paid in cash or by credit card

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents reflecting tips received by bargaining unit employees responsive to Request 2h at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

i. Any tip credit that was used by the employer, taxed and paid to the employee as part of their wages

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 2i as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same.

j. A copy of all records for each employee that received uniform allowance, including the rate of the allowance and the date it was paid

Response and Objections: Subject to the General Objections above, Sparks has no documents responsive to Request 2j.

Request 3. Information in writing pertaining to all past practices for the following issues:

a. Practice for changing before and after work

Response and Objections: Subject to the General Objections above, Sparks has no documents responsive to Request 3a. Sparks further responds that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

b. Practice for overtime, how it is scheduled and how it is paid, cash, non-taxable cash or check

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents reflecting overtime payments to bargaining unit employees responsive to Request 3b at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods. Sparks further responds that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

Request 4. Name address and contact person for the prior payroll company. Please include the template draft of the payroll checks used indicating deductions, reimbursements and all year to date pay. Meaning a copy of the former paystub that an employee had received from the prior payroll company listing all of the itemized categories that the employer had used to establish pay.

Responses and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 4 at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods. Sparks further responds that Fidelity can be reached at (877) 902-0304; and ADP can be reached at (855) 204-1905.

Request 5. A copy of the name, address, contact number and contact person for the new payroll company using the same format categorized lists that the employer used to calculate rate of pay (as in part 4 above).

Responses and Objections: Subject to the General Objections above, Sparks responds that Fidelity can be reached at (877) 902-0304.

Request 6. The reason in writing why the employer changed payroll companies.

Response and Objections: Subject to the General Objections above, Sparks responds that it changed payroll companies because it elected to try a new service provider.

Request 7. Copy of any evidence and/or videos that the employer has pertaining as evidence to support the employer's representative's response to the Union's unconditional return to work. We were told in writing by the employer representative that the employees could not return to work due to the fact that the representative was protecting his client's property due to incidents that took place at Sparks which had nothing to do with the employees or the strike or the lockout.

Response and Objections: Sparks objects to Request 7 as it facially seeks irrelevant information "which had nothing to do with the employees or the strike or the lockout." Subject to the foregoing objection and the General Objections above, Sparks responds that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

Request 8. Copy of any documents that the employer or employer representative has sent to unemployment as a reason for denying unemployment insurance.

Response and Objections: Subject to the General Objections above, Sparks objects to Request 8 as it does not set forth the name(s) of employees for which information is sought, or a relevant time period for its inquiry. Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 8 at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.



Request 9. All personal belongings that belong to all locked out employees from their locker or wherever else they may have them placed in the restaurant or on the restaurant's property to be returned to each employee upon request from the Union in writing (please see request) within 24 hours of the notice. The employer shall let those employees in to collect their items. If the employer refuses to do so the Union will file necessary complaints with NYPD.

Response and Objections: Sparks objects to Request 9 as it is not a request for information to which a response is required.

Request 10. A copy of and an accounting of all money paid by the employer on anti-union activity during and prior to the Union's certification. Example, if the employer has held anti-union meetings, captured audiences prior to 3 years or during the time the Union has been certified the employer would have had filed a statement with the US Department of Labor reporting the expenditure for anti-union activity.

Response and Objections: Subject to the General Objections above, Sparks will make available to the union for inspection and review documents responsive to Request 10 at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

Request 11. Copy of the employer's statement filed with the US Department of Labor on the expense that was paid during the time the Union has been certified for union activity from prior to the current representative and for the current representative. A statement from the current representative filed with the government for the amount that was paid or contract that is signed for anti-union activity.

Response and Objections: Subject to the General Objections above, to the extent Request 11 seeks information separate and apart from that sought by Request 10, Sparks cannot respond to Request 11 as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same.

Request 12. A copy of the lawsuits that were settled between the employer and the employees represented by Louis Pechman. The settlement shall be complete in all areas. It is the Union's understanding that there was a settlement for sexual harassment, a settlement for retaliation, and there was a settlement for misappropriation of tips.

Response and Objections: Sparks objects to Request 12 based upon the General Objections above. Sparks further responds that the union has identified "Louis Pechman" as their attorney in connection with the review of Sparks' responses to these Requests. Accordingly, the union can obtain such information from Mr. Pechman directly.

Request 13. A copy of all COBRA letters that the employer sent out to the employees notifying them that their coverage would be discontinued as of January 1, 2015. The Arisa law covering that requires the employer to notify each employee 30 days in advance to have the ability to pay for their coverage under COBRA. If the employer fails to do so, the employer will be responsible for all medical coverage going forward until at such time notice is given. Because of the refusal to discuss with the Union by the employer or the employer's representative the medical for the employees have been and still are willing and able to make their contributions to healthcare. At no time were the employees notified of termination or notified that their coverage was to be cut off. It has been a past practice for the employer for many years and in retaliation for union activity the employer has cut off their coverage.

Response and Objections: Subject to the General Objections above, Sparks is in the process of sending notices of eligibility to elect COBRA continuation coverage to a number of bargaining unit employees, and Sparks will make available to the union for inspection and review documents responsive to Request 13 at the offices of Phillips Nizer, 666 Fifth Avenue, New York, New York 10103. Please contact Marc B. Zimmerman or Regina Faul to arrange to schedule review periods.

Request 14. Please send a copy of all past practices that were in effect three years prior to and during the time of the Union's certification. These past practices should include the methodology used for

a. pay, including all the categories of the new company and old

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14a as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

b. The practice for Fidelity

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14b as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

c. The SPD for the Fidelity Fund

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14c as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union. Sparks also attaches hereto the Summary Plan Description for the Michael Cetta, Inc. 401(k) Plan.

d. The employers reason to not allow employees to withdraw money from Fidelity. It has been reported to us by Fidelity that a letter is required from the employer before any money can be withdrawn. The employer has failed to provide the SPD, which we are requesting now, for the plan description. This is another Arisa violation.

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14d as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union. Sparks also attaches hereto the Summary Plan Description for the Michael Cetta, Inc. 401(k) Plan.

e. The name, telephone, address and contact person for Fidelity prior to the Union three years and after the Union certification and any other annuity or 401k fund that contributions were being made by the employees and if changed the reason for changing them.

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14e as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

f. Also, any cost incurred by the employer for administering this fund or paid to the employer for administering this fund or any admin cost that is being paid by the employees for their participation in the employer sponsored fund.

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 14f as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same. Sparks states affirmatively that all terms and conditions of employment for bargaining unit employees are subjects of bargaining presently being negotiated with the union.

Request 15. A copy of all information that the employer has received from the healthcare fund pertaining to benefits, status, etc. and the Fidelity and any other fund pertaining to investments, status, practices.

Response and Objections: Subject to the General Objections above, Sparks cannot respond to Request 15 as it is unclear, and Sparks does not understand what information the union is requesting and asks the union to clarify same.

Marc B. Zimmerman, Esq.  
Phillips Nizer LLP  
666 Fifth Avenue  
New York, New York 10103-0084  
Tel: (212) 841-0512  
Fax: (212) 262-5152  
[mzimmerman@phillipsnizer.com](mailto:mzimmerman@phillipsnizer.com)

From: Jhana Branker [mailto:JBranker@UFCW342.ORG]  
Sent: Friday, January 09, 2015 4:48 PM  
To: Marc Zimmerman  
Cc: Lisa O'Leary; Lou Loiacono; Lou Sollicito  
Subject: Sparks Bargaining Information Request  
Importance: High



Sent on behalf of President Richard Abondolo, Local 342:

**DRAFT**

In order for the Union to continue to bargain the collective bargaining agreement with Sparks, we need to have the ability to fully represent our members in bargaining the Union has included in this document a list of information that will be required to conclude or proceed with negotiations.

The Union is requesting:

1. Three years prior to the date of recognition all payroll records and copies of timecards to match the payroll records. All videos of all of the wait staff and bar staff punching in and out to work.
2. A copy of all payroll records pertaining to each employee to include the following:
  - a. Hours worked, the rate that was paid for the hours worked
  - b. All overtime hours for each week and the rate that was paid for all overtime hours
  - c. All vacation reimbursements and the rate that was paid for vacation reimbursements
  - d. All call-in pay that each employee received and the rate they received for it
  - e. All paid time off excluding vacation and the rate of pay that was paid for it
  - f. A list from the company of all tip credit per hour the company took for each employee
  - g. A list from the company of all meal credits the company took for each employee
  - h. All party contracts going back three years prior to the recognition determining the gratuity for each party contract and whether the gratuity was paid in cash or by credit card
  - i. Any tip credit that was used by the employer, taxed and paid to the employee as part of their wages
  - j. A copy of all records for each employee that received uniform allowance, including the rate of the allowance and the date it was paid
3. Information in writing pertaining to all past practices for the following issues:
  - a. Practice for changing before and after work
  - b. Practice for overtime, how it is scheduled and how it is paid, cash, non-taxable cash or check
4. Name address and contact person for the prior payroll company. Please include the template draft of the payroll checks used indicating deductions, reimbursements and all year to date pay. Meaning a copy of the former paystub that an employee had received from the prior payroll company listing all of the itemized categories that the employer had used to establish pay.
5. A copy of the name, address, contact number and contact person for the new payroll company using the same format categorized lists that the employer used to calculate rate of pay (as in part 4 above).
6. The reason in writing why the employer changed payroll companies.
7. Copy of any evidence and/or videos that the employer has pertaining as evidence to support the employer's representative's response to the Union's unconditional return to work. We were told in writing by the employer representative that the employees could not return to work due to the fact that the representative was protecting his client's property due to incidents that took place at Sparks which had nothing to do with the employees or the strike or the lockout.
8. Copy of any documents that the employer or employer representative has sent to unemployment as a reason for denying unemployment insurance.

9. All personal belongings that belong to all locked out employees from their locker or wherever else they may have them placed in the restaurant or on the restaurant's property to be returned to each employee upon request from the Union in writing (please see request) within 24 hours of the notice. The employer shall let those employees in to collect their items. If the employer refuses to do so the Union will file necessary complaints with NYPD.
10. A copy of and an accounting of all money paid by the employer on anti-union activity during and prior to the Union's certification. Example, if the employer has held anti-union meetings, captured audiences prior to 3 years or during the time the Union has been certified the employer would have had filed a statement with the US Department of Labor reporting the expenditure for anti-union activity.
11. Copy of the employer's statement filed with the US Department of Labor on the expense that was paid during the time the Union has been certified for union activity from prior to the current representative and for the current representative. A statement from the current representative filed with the government for the amount that was paid or contract that is signed for anti-union activity.
12. A copy of the lawsuits that were settled between the employer and the employees represented by Louis Pechman. The settlement shall be complete in all areas. It is the Union's understanding that there was a settlement for sexual harassment, a settlement for retaliation, and there was a settlement for misappropriation of tips.
13. A copy of all COBRA letters that the employer sent out to the employees notifying them that their coverage would be discontinued as of January 1, 2015. The Arisa law covering that requires the employer to notify each employee 30 days in advance to have the ability to pay for their coverage under COBRA. If the employer fails to do so, the employer will be responsible for all medical coverage going forward until at such time notice is given. Because of the refusal to discuss with the Union by the employer or the employer's representative the medical for the employees have been and still are willing and able to make their contributions to healthcare. At no time were the employees notified of termination or notified that their coverage was to be cut off. It has been a past practice for the employer for many years and in retaliation for union activity the employer has cut off their coverage.
14. Please send a copy of all past practices that were in effect three years prior to and during the time of the Union's certification. These past practices should include the methodology used for
  - a. pay, including all the categories of the new company and old
  - b. The practice for Fidelity
  - c. The SPD for the Fidelity Fund
  - d. The employer's reason to not allow employees to withdraw money from Fidelity. It has been reported to us by Fidelity that a letter is required from the employer before any money can be withdrawn. The employer has failed to provide the SPD, which we are requesting now, for the plan description. This is another Arisa violation.
  - e. The name, telephone, address and contact person for Fidelity prior to the Union three years and after the Union certification and any other annuity or 401k fund that contributions were being made by the employees and if changed the reason for changing them.
  - f. Also, any cost incurred by the employer for administering this fund or paid to the employer for administering this fund or any admin cost that is being paid by the employees for their participation in the employer sponsored fund.
15. A copy of all information that the employer has received from the healthcare fund pertaining to benefits, status, etc. and the Fidelity and any other fund pertaining to investments, status, practices.



This is the first list of several requests. Although the above requests may be specific in nature, they are not limited to but inclusive of any other information relevant to the above and/or bargaining. Save yourself some trouble because it could be expansive. You might as well give as much information as possible and save yourself some time.

NOTE: The Union has the right to add, change, or delete any of the above requests. This is a DRAFT, therefore there could be misspellings or incorrect grammar. If there is any confusion the Union is available to discuss and/or explain any of the above.

Jhana Branker  
UFCW Local 342  
166 East Jericho Turnpike  
Mineola, NY 11501  
Tel: (516) 824-3632  
Fax: (516) 824-3656

## SPARKS STEAK HOUSE

PASQUALE A. CETTA

MICHAEL A. CETTA

210 EAST 46 STREET, NEW YORK, NEW YORK 10017  
687-4855

August 25, 2015

VIA FEDEX OVERNIGHT &amp; REGULAR MAIL

Mr. Adnan Nuredini  
30-37 38<sup>th</sup> Street, 1<sup>st</sup> Fl  
Astoria, NY 11103

Exh. No. GC4 Received ☒ Rejected ☐  
Case No.: \_\_\_\_\_  
Case Name: SPARKS STEAK HOUSE  
No. Pgs: 1 Date: 8/29/15 Rep.: 30

Re: Offer of Reinstatement

Dear Adnan Nuredini:

As a result of the departure of a permanent replacement employee, effective on August 25, 2015 Sparks Steak House is pleased to offer you full reinstatement to a position as a waiter, effective immediately, consistent with your preferential rehire rights as an economic striker under the National Labor Relations Act. See *The Laidlaw Corp.*, 171 NLRB 1366, 1369-70 (1968), *aff'd*, 414 F.2d 99 (7th Cir. 1969), *cert. denied*, 397 U.S. 920 (1970).

Please immediately contact Shailesh Desai and Susan Edelstein to arrange for your return to work or to advise Sparks Steak House that you voluntarily elect not to exercise your rehire right (e.g., if you have obtained alternate employment or otherwise choose not to return to work). If you do not contact us promptly, we will be forced to offer the position to another employee.

We look forward to hearing from you.

Sincerely

Sparks Steak House

By: John M. Cetta

cc: Lou Lofaono, UFCW Local 342

THE FORT KNOX OF FINE AGED PRIME BEEF

GC 4



Richard Abondolo  
President

Lisa O'Leary  
Secretary-Treasurer

Deana Telmany  
Director of Organization

Tenisha Williamson  
Recording Secretary  
Executive Assistant to the President

August 25, 2015

SENT VIA CERTIFIED MAIL: 7006 2150 0005 7933 0929

Mr. Steven Cetta  
Sparks Steakhouse  
210 E 46<sup>th</sup> Street  
New York, NY 10017

Exh. No. GC5 Received ☒ Rejected ☐

Case No.:

Case Name: SPARKS REST

No. Pgs: 1 Date: 8/19/15 Rep: POW

Mr. Cetta:

As we understand, it is your company's position that various workers represented by UFCW Local 342 were previously permanently replaced.

Although we do not agree with your characterization of their status and we reserve all of our legal rights, remedies and positions in this matter, please consider this a demand for the following information:

1. A full list of whom you are claiming to be on a preferential rehire list along with their dates of hire and last date worked.
2. The methodology utilized in compiling the order of recall.
3. Names and addresses of all persons you claim to have permanently replaced your other employees with the date of their hire, job title and rate of pay.

Notwithstanding the above demand, Local 342 considers all the employees who are subjects of the pending NLRB case to have been illegally discharged and to be entitled to reinstatement with full back pay.

Yours truly,

Lou Lolocono  
Executive Director of UFCW Local 342

Cc: Marty Milner, Lisa O'Leary, Stephen Booras, Mark Zimmerman, Regina Faul

166 East Jericho Turnpike • Mineola, NY 11501 • 516-824-3600

GC 5

**PHILLIPS NIZER LLP**

Regina E. Faul  
212.841.0575  
rfaul@phillipsnizer.com

September 11, 2015

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VIA ELECTRONIC MAIL -Lloiacono@UFCW342.org  
AND REGULAR MAIL

Lou Lloiacono  
Executive Director  
UFCW Local 342  
166 E. Jericho Turnpike  
Mineola, NY 11501

Exh. No. GC6 Received      Rejected       
Case No.:       
Case Name: SPARKS STEAK HOUSE  
No. Pgs: 3 Date: 9/11/15 Rep:     

Re: Sparks Steak House

Dear Lou:

We have been referred your letter to Steven Cetta dated August 25, 2015 for response. We note that Sherai Pernell (from your office) e-mailed me and Marc Zimmerman a copy of the letter late in the afternoon on September 3, 2015, and that the envelope in which the letter was delivered was postage-stamped and date-stamped September 3, 2015.

Following are Sparks Steak House's responses to Local 342's information requests contained in your letter.<sup>1</sup>

Request (1): A full list of whom you are claiming to be on a preferential rehire list along with their dates of hire and last date worked.

Response: All employees formerly employed as waiters and bartenders at Sparks Steak House who engaged in an economic strike commencing on December 10, 2014 are eligible for preferential rehire consistent with their rights as economic strikers under the National Labor Relations Act. *See The Laidlaw Corp.*, 171 NLRB 1366, 1369-70 (1968), *aff'd*, 414 F.2d 99 (7th Cir. 1969), *cert. denied*, 397 U.S. 920 (1970). Although the union already maintains the requested information concerning such employees, we attach a list of same.

Request (2): The methodology utilized in compiling the order of recall.

Response: Sparks Steak House objects to the union's request as vague, particularly as it uses the term "order of recall". Notwithstanding such objection, Sparks Steak House has determined to fill open positions at Sparks Steak House with employees

<sup>1</sup> Sparks Steak House reserves all rights to supplement and/or amend its responses and objections as it deems necessary and relevant.

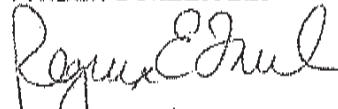
GC 6

PHILLIPS NIZER LLP  
Lou Lofacono  
Executive Director  
September 11, 2015

eligible for preferential rehire consistent with their rights as an economic striker under the National Labor Relations Act (*see The Laidlaw Corp.*, 171 NLRB 1366, 1369-70 (1968), *aff'd*, 414 F.2d 99 (7th Cir. 1969), *cert. denied*, 397 U.S. 920 (1970)) on a "seniority basis," starting with the employee who has been employed by Sparks Steak House for the longest tenure.

Request (3): Names and addresses of all persons you claim to have permanently replaced your other employees with the date of their hire, job title and rate of pay.  
Response: Sparks Steak House objects to the union's request as vague, particularly as it uses the phrase "all persons you claim to have permanently replaced your other employees". Notwithstanding such objection, Sparks Steak House attaches a list of those employees it hired as permanent replacements for its employees who engaged in an economic strike commencing on December 10, 2014, along with their dates of hire, addresses, job titles and rates of pay.

Very truly yours,  
PHILLIPS NIZER LLP

  
Regina E. Faul

Encl.  
cc: Sparks Steak House

## Preferential Rehire List

Employee Name	Dept/Cost Center	Date_of_Hire	Last day worked
Nuredini, Adnan	Bartenders	21-Jul-95	10-Dec-14
Ivce, Ante	Waiters	2-Apr-97	10-Dec-14
Lustica, Silvio	Waiters	1-Aug-97	10-Dec-14
Karahoda, Jeton	Waiters	1-Jun-98	10-Dec-14
Alarcon, Gerardo Jose	Waiters	29-Feb-00	10-Dec-14
Iriarte, Juan A.	Waiters	5-Apr-00	10-Dec-14
Spahija, Fatlum	Waiters	29-Aug-00	10-Dec-14
Prelvukaj, Sadik	Waiters	1-Dec-01	10-Dec-14
Zeqiraj, Mergim	Waiters	22-Jul-02	10-Dec-14
Lamniji, Rachid	Waiters	5-Aug-02	10-Dec-14
Hoxhaj, Elvi	Bartenders	21-Oct-02	10-Dec-14
Neziraj, Xhavit	Waiters	29-Mar-04	10-Dec-14
Lokaj, Valon	Waiters	7-Feb-05	10-Dec-14
Mushkolaj, Iber	Waiters	21-Feb-05	10-Dec-14
Collins, Ian	Waiters	12-May-05	10-Dec-14
Resulbegu, Nagip	Waiters	21-Nov-05	10-Dec-14
Cutra, Elvis	Waiters	22-May-06	10-Dec-14
Tagani, Alim	Waiters	27-Nov-06	10-Dec-14
Fuller, Kristofer S.	Waiters	19-Feb-07	10-Dec-14
El Idrissi, Youssef S.	Waiters	30-Jun-08	10-Dec-14
Neziraj, Kenan	Waiters	2-Sep-08	10-Dec-14
Hajdini, Valjon	Waiters	22-Sep-08	10-Dec-14
Demaj, Arlind	Waiters	21-Oct-08	10-Dec-14
Kukaj, Milazim	Waiters	23-Nov-09	10-Dec-14
Neziraj, Gani	Waiters	1-Dec-09	10-Dec-14
Seddiki, Khalid	Waiters	9-Apr-10	10-Dec-14
Jakupi, Amir	Waiters	27-Sep-11	10-Dec-14
Albarracin, Fredy Y.	Waiters	17-Oct-11	10-Dec-14
Patino, Juan Manuel	Waiters	21-Nov-11	10-Dec-14
Stepien, Andrzej R.	Waiters	14-Aug-12	10-Dec-14
Gjevukaj, Adem	Waiters	4-Sep-12	10-Dec-14
Beljan, Marko	Waiters	22-Oct-12	10-Dec-14
Puente, Francisco	Waiters	12-Nov-12	10-Dec-14
Kelmendi, Bardhyl	Waiters	19-Nov-12	10-Dec-14
Qella, Ermal	Waiters	18-Nov-13	10-Dec-14
Campanella, James	Waiters	25-Nov-13	10-Dec-14



## Permanent Replacements

Employee Name	Dept/Cost Center	Add_Ln1_Mailing	Add_Ln2_Residence	City_Mailing	State_Mailing	Zip	Date_of_Hire	Rate_of_Pay	Rate_Before 3.75 tip credit
Cerda Fernandez, Rafael	Waiters	780 Grand Concourse		Bronx	NY	10451	9-Apr-11	\$ 5.00	\$ 8.75
Vargas Gomez, Hector Javier	Waiters	1749 Grand Concourse Ave.	Apt W3-O	Bronx	NY	10453	9-Aug-11	\$ 5.00	\$ 8.75
Perez Tatis, Pablo R	Waiters	355 East 143 Street	Apt 14B	Bronx	NY	10454	16-Sep-11	\$ 5.00	\$ 8.75
Peguerro, Miguel A.	Waiters	2570 Briggs Avenue	Apt 2E	Bronx	NY	10458	31-Jul-12	\$ 5.00	\$ 8.75
Flores, Miguel	Waiters	384 Harman Street		Brooklyn	NY	11237	29-Jan-13	\$ 5.00	\$ 8.75
Martinez, Jose Luis	Waiters	121 Sherman Avenue	# 21	New York	NY	10034	4-Dec-13	\$ 5.00	\$ 8.75
Globus, Andrew J.	Waiters	8711 77th Street		Wood Haven	NY	11421	7-Oct-14	\$ 5.00	\$ 8.75
Belabaz, Mostafa	Waiters	61-15 97th Street		Rego Park	NY	11374	11-Oct-14	\$ 5.00	\$ 8.75
Vasconez, Luis	Waiters	2869 Sampson Ave		Bronx	NY	10465	29-Oct-14	\$ 5.00	\$ 8.75
Calle, Luis Donato	Waiters	40-40 79th Street	C# 602	Elmhurst	NY	11373	10-Nov-14	\$ 5.00	\$ 8.75
Kesly, Anass	Waiters	466 87th Street	Apt# 9	Brooklyn	NY	11209	11-Nov-14	\$ 5.00	\$ 8.75
Calle, Osquitar D.	Waiters	61-59 82nd Street		Middle Village	NY	11379	10-Dec-14	\$ 5.00	\$ 8.75
Guevara, Luis A.	Waiters	48-53 58 Lane		Woodside	NY	11377	10-Dec-14	\$ 5.00	\$ 8.75
Rios, Hugo A.	Waiters	4207 Elbertson St.	Apt. # 4A	Elmhurst	NY	11373	10-Dec-14	\$ 5.00	\$ 8.75
Alami, Majid	Waiters	2004 E. 15th Street	Apt. # 2F	Brooklyn	NY	11229	11-Dec-14	\$ 5.00	\$ 8.75
Cassin, Edward	Waiters	659 Woodward Avenue	Apt 2L	Ridgewood	NY	11385	11-Dec-14	\$ 5.00	\$ 8.75
Cigdemci, Halil	Waiters	30-24 44th ST	Apt. # 2R	Astoria	NY	11103	11-Dec-14	\$ 5.00	\$ 8.75
Cox, Tanner Ashton	Waiters	25-78 31st Street		Astoria	NY	11102	11-Dec-14	\$ 5.00	\$ 8.75
Ivanov, Yavor A.	Waiters	2980 Valentine Ave.	Apt. # 202	Bronx	NY	10458	11-Dec-14	\$ 5.00	\$ 8.75
Livingston, Pleasure Sky	Waiters	315 Ovington Ave.	Apt. # 3L	Brooklyn	NY	11209	11-Dec-14	\$ 5.00	\$ 8.75
Ramirez, Luisa	Waiters	25-01 75th Street	2nf Floor	East Elmhurst	NY	11370	11-Dec-14	\$ 5.00	\$ 8.75
Vargas, Junior De Jesus	Waiters	510 East 139 Street		Bronx	NY	10454	11-Dec-14	\$ 5.00	\$ 8.75
Pluma, Jose F.	Waiters	360 East 55th Street		New York	NY	10022	12-Dec-14	\$ 5.00	\$ 8.75
Duarte, Oscar A.	Waiters	86-11 Whitney Ave.	Apt. # 5H	Elmhurst	NY	11373	13-Dec-14	\$ 5.00	\$ 8.75
Guarco, Kyle D.	Waiters	879 Myrtle Ave.		Kings	NY	11206	15-Dec-14	\$ 5.00	\$ 8.75
Leon, Ruben	Waiters	43- 30 48th Street	Apt. # F14	Sunnyside	NY	11104	15-Dec-14	\$ 5.00	\$ 8.75

Employee Name	Dept/Cost Center	Add_Ln1_Mailing	Add_Ln2_Residence	City_Mailing	State_Mailing	Zip	Date_of_Hire	Rate_Of_Pay	Rate_Before_3.75_tip	credit
Morrison, Ian	Waiters	659 Woodward Avenue		Ridgewood	NY	11385	15-Dec-14	\$ 5.00	\$ 8.75	
Kucuk, Ozkan	Waiters	113 72nd Street	Apt. # 1	North Bergen	NJ	07047	19-Dec-14	\$ 5.00	\$ 8.75	
Desimone, Michael G.	BarTenders	377 Adelaide Avenue		Staten Island	NY	10306	11-Dec-14	\$ 7.50	\$ 11.25	
Sheaffer, Trevor D.	BarTenders	484 Clinton ave.	Apt. # 5A	Brooklyn	NY	11213	11-Dec-14	\$ 7.50	\$ 11.25	

1263158.J

**PHILLIPS NIZER** LLP

**Regina E. Faul**  
212.841.0575  
rfaul@phillipsnizer.com

October 5, 2015

**VIA ELECTRONIC MAIL -Lloiacono@UFCW342.org  
AND REGULAR MAIL**

Lou Lloiacono  
Executive Director  
UFCW Local 342  
166 E. Jericho Turnpike  
Mineola, NY 11501

**Re: Sparks Steak House**

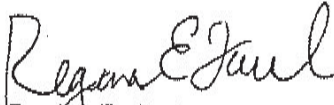
Dear Lou:

Following is Sparks Steak House's amended response to request 3 of Local 342's information requests contained in your letter to Steven Cetta dated August 25, 2015. Accordingly, my September 11, 2015 letter to you, and the enclosures thereto, are amended likewise, as follows:<sup>1</sup>

**Request (3):** Names and addresses of all persons you claim to have permanently replaced your other employees with the date of their hire, job title and rate of pay.

**Response:** Sparks Steak House objects to the union's request as vague, particularly as it uses the phrase "all persons you claim to have permanently replaced your other employees". Notwithstanding such objection, Sparks Steak House attaches a list of those employees it hired as permanent replacements for its employees who engaged in an economic strike commencing on December 10, 2014, along with their dates of hire, addresses, job titles and rates of pay.

Very truly yours,  
PHILLIPS NIZER LLP

  
Regina E. Faul

Encl.

cc: Sparks Steak House

<sup>1</sup> Sparks Steak House reserves all rights to supplement and/or amend its responses and objections as it deems necessary and relevant.

666 Fifth Avenue  
New York, NY 10103-0084  
212.977.9700  
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600 Old Country Road  
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Court Plaza North  
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Exh. No. 607 Received ✓ Rejected    

Case No.:                     

Case Name: SPARKS STEAK HOUSE

No. Pgs: 2 Date: 10/5/15 Rep: 100

GC 7

A217

## Permanent Replacements

Employee Name	Dept/Cost Center	Add_Ln1_Mailing	Add_Ln2_Residence	City_Mailing	State_Mailing	Zip	Date_of_Hire	Rate_of_Pay	Rate_Before credit
Cerda Fernandez, Rafael	Waiters	780 Grand Concourse		Bronx	NY	10451	9-Apr-11	\$ 5.00	\$ 8.75
Vargas Gomez, Hector Javier	Waiters	1749 Grand Concourse Ave.	Apt W3-O	Bronx	NY	10453	9-Aug-11	\$ 5.00	\$ 8.75
Perez Tatis, Pablo R	Waiters	355 East 143 Street	Apt 14B	Bronx	NY	10454	16-Sep-11	\$ 5.00	\$ 8.75
Peguero, Miguel A.	Waiters	2570 Briggs Avenue	Apt 2E	Bronx	NY	10458	31-Jul-12	\$ 5.00	\$ 8.75
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Globus, Andrew J.	Waiters	8711 77th Street		Wood Haven	NY	11421	7-Oct-14	\$ 5.00	\$ 8.75
Belabaz, Mostafa	Waiters	61-15 97th Street		Rego Park	NY	11374	11-Oct-14	\$ 5.00	\$ 8.75
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Kesly, Anass	Waiters	466 87th Strret	Apt# 9	Brooklyn	NY	11209	11-Nov-14	\$ 5.00	\$ 8.75
Calle, Osquitar D.	Waiters	61-59 82nd Street		Middle Village	NY	11379	10-Dec-14	\$ 5.00	\$ 8.75
Guevara, Luis A.	Waiters	48-53 58 Lane		Woodside	NY	11377	10-Dec-14	\$ 5.00	\$ 8.75
Rios, Hugo A.	Waiters	4207 Elbertson St.	Apt. # 4A	Elmhurst	NY	11373	10-Dec-14	\$ 5.00	\$ 8.75
Alami, Majid	Waiters	2004 E. 15th Street	Apt. # 2F	Brooklyn	NY	11229	11-Dec-14	\$ 5.00	\$ 8.75
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Cox, Tanner Ashton	Waiters	25-78 31st Street		Astoria	NY	11102	11-Dec-14	\$ 5.00	\$ 8.75
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Pluma, Jose F.	Waiters	360 East 55th Street		New York	NY	10022	12-Dec-14	\$ 5.00	\$ 8.75
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Leon, Ruben	Waiters	43- 30 48th Street	Apt. # F14	Sunnyside	NY	11104	15-Dec-14	\$ 5.00	\$ 8.75

Employee Name	Dept/Cost Center	Add_Ln1_Mailing	Add_Ln2_Residence	City_Mailing	State_Mailing	Zip	Date_of_Hire	Rate_Of_Pay	Rate Before 3.75 tip credit
Morrison, Ian	Waiters	659 Woodward Avenue		Ridgewood	NY	11385	15-Dec-14	\$ 5.00	\$ 8.75
Kucuk, Ozkan	Waiters	113 72nd Street	Apt. # 1	North Bergen	NJ	07047	19-Dec-14	\$ 5.00	\$ 8.75
Zenteno, Andreas	Waiters	5805 47th Ave.		Woodside	NY	11377	11-Dec-14	\$ 5.00	\$ 8.75
Guzhnay, Freddy M	Waiters	146-23 Hillside Avenue	Apt 6	Jamaica	NY	11435	11-Dec-14	\$ 5.00	\$ 8.75
Ruiz, Carlos A	Waiters	420 40th Street	Apt 3L	Brooklyn	NY	11232	19-Dec-14	\$ 5.00	\$ 8.75
Vainshtub, Maximillian	Waiters	6 Westwood Road south		Massapequa Par	NY	11762	12-Dec-14	\$ 5.00	\$ 8.75
DeSimone, Michael G.	Bartenders	377 Adelaide Avenue		Staten Island	NY	10306	11-Dec-14	\$ 7.50	\$ 11.25
Sheaffer, Trevor D.	Bartenders	484 Clinton ave.	Apt. # 5A	Brooklyn	NY	11213	11-Dec-14	\$ 7.50	\$ 11.25



**Material Under Seal Deleted**

Discovery Benefits, Inc.  
PO Box 2079  
Omaha, NE 68103-2079

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Exh. No: GC 8 Received ☒ Rejected ☐

Case No.:

Case Name:

No. Pgs:

Date:

Rep.:

1/16/2015

Milazim Kukaj

Dear Milazim Kukaj:

This letter contains important information about your COBRA continuation coverage rights as well as other health coverage alternatives that may be available to you through the Health Insurance Marketplace. You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. For more information on the Health Insurance Marketplace go to [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596. Please read the information in this notice very carefully before you make your decision.

On 12/31/2014, you experienced an event of a/an Termination which constitutes a qualifying event under the Sparks Steak House group health plan(s). As a result, your coverage, and that of your covered dependent(s), if any, will end on the date(s) set forth on the COBRA Continuation Election Form accompanying this letter. Under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) this entitles you and your covered dependent(s) if any, to elect to continue coverage (referred to as COBRA coverage) under the plan(s) enrolled as active member(s). The first day of COBRA coverage and the maximum continuation period is determined by the plan. Please refer to your COBRA Election Form enclosed to determine your first day of COBRA coverage and maximum continuation period ("Last Day of COBRA").

**COBRA Continuation Coverage**

Federal law requires that most group health plans (including this plan) give employees and their families the opportunity to continue their health care coverage when there is a "qualifying event" that would result in a loss of coverage under an employer's plan. Depending on the type of qualifying event, "qualified beneficiaries" can include the employee (or retired employee) covered under the group health plan, the covered employee's spouse, and the dependent children of the covered employee.

Continuation coverage is the same coverage that the plan gives to other participants or beneficiaries under the plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the plan as other participants or beneficiaries covered under the plan.

**How to Elect COBRA Coverage**

Under COBRA, you have a limited number of days to elect continuation coverage. Your election window is determined by the plan and is calculated from the date your coverage under the plan is lost because of the event described above or the date this notice of your election rights is sent to you, whichever is later.

To elect COBRA coverage, you must complete and submit the enclosed election form to Discovery Benefits, Inc. no later than the Election Period End date ("Last Day to Elect") listed on the enclosed COBRA Election Form. This same notice may be sent separately to your spouse (if your spouse resides at a different address), if any; however, only one of you needs to elect continuation coverage for your spouse and dependent child(ren), if any, who wish to continue coverage. Furthermore, because COBRA gives you the right to elect coverage independently, you, your spouse or dependent child(ren), if any, may elect single coverage and not include those individuals who do not wish to continue coverage. For example, your covered spouse may elect continuation coverage even if you do not. In addition, continuation coverage may be elected for only one, several, or for all your dependent children who are qualified beneficiaries.

GC 8



Instead of enrolling in COBRA continuation coverage, there may be other more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage.



You should compare your other coverage options with COBRA continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage you may pay more out of pocket than you would under COBRA because the new coverage may impose a new deductible.

When you lose job-based health coverage, it is important to consider your other coverage options in considering whether to elect COBRA. Once you've made your choice, it can be difficult or impossible to switch to another coverage option.

#### **Cost of COBRA Continuation Coverage**

Each qualified beneficiary is required to pay the entire cost of continuation coverage. The amount a qualified beneficiary may be required to pay may not exceed 102 percent (or, in the case of an extension of continuation coverage due to a disability, 150 percent) of the cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving continuation coverage. The required monthly payment for each option is described in the enclosed election form.

#### **Payment of COBRA Coverage Premiums**

##### First payment for continuation coverage

If you elect continuation coverage, you are not required to send any payment with your election. However, you must make your first payment for continuation coverage no later than 45 days after the date of your election. (This is the date your Election Form is postmarked, if mailed.) If you do not make your first payment for continuation coverage in full no later than 45 days after the date of your election, you will lose all continuation coverage rights under the plan. Your first payment must cover the cost of COBRA continuation coverage from the time your coverage under the plan was lost through the end of the month, as well as any premiums that become due prior to the end of the 45-day period. You are responsible for making sure that the amount of your first payment is correct. You may contact Discovery Benefits' customer service team at (866) 451-3399 to confirm the correct amount of your first payment.

##### Monthly payments for continuation coverage

After you make your first payment for continuation coverage, you will be required to make monthly payments for each subsequent month of COBRA continuation coverage. The current amount of this premium is explained in the enclosed COBRA Election Form. The premium may change in the future. Under the plan, each of these monthly payments for continuation coverage is due on the first day of the month for that month's coverage period. Thus, if you make a monthly payment on or before the first day of the month for the month to which it applies, your coverage under the plan will continue for that month without any break. The plan may, but is not required to, send monthly notices of payments due for these coverage periods.

Please pay only the amount due. If overpayment is made and you continue your COBRA coverage, the overpayment is applied to the next month's premium. To check the status of your payments, log into the member portal at [www.discoverybenefits.com](http://www.discoverybenefits.com) or contact our office at 866-451-3399, options 1, 2. To confirm whether your COBRA coverage is effective, call our Customer Service Department at (866) 451-3399.

Acceptance of your COBRA payment, whether by check, credit card, debit, money order or any other method of payment, does not guarantee that you have COBRA coverage. Our billing system is automated. This means that, in most cases, we will automatically accept your COBRA payment before we are able to verify whether you are eligible for COBRA coverage. Once we receive your payment, we will review our records to confirm that you are eligible for COBRA coverage.

If you terminate COBRA with a balance of less than \$25.00, this amount will not be refunded to you due to the administrative cost. Rather, it will be used by the employer who sponsors the group health plan to pay for plan administration expenses. Standard processing of any refund is 15 business days from the date the written request for a refund is received.

##### Grace periods for monthly payments

- Although monthly payments are due on the first day of each month, you will be given a grace period of 30 days after the first day of the month to make each monthly payment. The grace period does not apply for purposes of your first payment as discussed above. However, if you pay a monthly payment later than the first day of the coverage period to which it applies, but before the end of the grace period for the month, your coverage under the plan will be suspended as of the first day of the month and then retroactively reinstated (going back to the first day of the month) when the monthly payment is received.

This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated. If you fail to make a monthly payment before the end of the grace period for that month, you will lose all rights to continuation coverage under the plan. Payments postmarked after the grace period are late. Late payments will not be accepted, and coverage will terminate with no possibility of reinstatement. Proof of timely payment is your responsibility.

Your first payment and all monthly payments for continuation coverage must be made payable to Discovery Benefits, Inc. and mailed to the address provided in the enclosed Election Form.

#### **Length of COBRA Coverage Period**

In the case of a loss of coverage due to the end of employment or reduction in hours of employment, coverage generally may be continued for up to a total of 18 months.

In the case of a loss of coverage due to an employee's death, divorce or legal separation, the employee's becoming entitled to Medicare benefits or a dependent child ceasing to be a dependent under the terms of the plan, coverage may be continued for up to a total of 36 months.

Special rules apply if you become entitled to Medicare benefits less than 18 months before your termination or reduction in hours of employment. If you became entitled to Medicare BEFORE your qualifying event, COBRA laws allow you to remain eligible for up to 18 months of COBRA coverage. However, your spouse and dependent child(ren), if any, may receive extended COBRA coverage for up to the greater of either: (a) 36 months from the date of your Medicare entitlement; or (b) 18 months from the date of your qualifying event, or loss of coverage, whichever is later. For example, if you become entitled to Medicare eight months before the date on which your employment terminates, COBRA coverage for your spouse and eligible dependents can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus 8 months). Note that a person generally has become entitled to Medicare when he or she has applied for Social Security income payments or has filed an application for benefits under Part A or Part B of Medicare.

We have used the information supplied by Sparks Steak House to calculate your maximum continuation period under the plan(s) you were insured prior to your qualifying event. If there is a discrepancy between our calculation and the underwriting insurance carrier, the insurance carrier always governs. Please contact your insurance carrier(s) to determine the exact end of your maximum continuation period.

If you and your spouse or dependent child(ren), if any, elect coverage, it can last for a maximum continuation period ("Last Day of COBRA") described in the enclosed COBRA Election Form beginning on the date of your qualifying event, or loss of coverage, whichever is later. The first day of COBRA coverage will be determined by the plan. This period may be extended for the following reasons:

#### **How Can You Extend the Length of COBRA Continuation Coverage?**

If you elect continuation coverage and your initial qualifying event is the covered employee's termination or reduction in hours of employment, an extension of the maximum period of coverage may be available if a qualified beneficiary is disabled or a second qualifying event occurs. You must notify Discovery Benefits, Inc. at (866) 451-3399 of a disability or a second qualifying event in order to extend the period of continuation coverage. Failure to provide notice of a disability or second qualifying event will eliminate the right to extend the period of continuation coverage.

If your spouse or dependent children are qualified beneficiaries and they experience another qualifying event while receiving 18 months (or 29 months in the case of a disability extension, discussed below) of COBRA continuation coverage, they may be allowed up to 36-months of COBRA coverage. A second qualifying event may include your death, divorce or legal separation or becoming entitled to Medicare benefits (under Part A, Part B, or both) or your dependent child's ceasing to be eligible for coverage as a dependent under the plan. These events extend the original maximum continuation period of COBRA coverage only if they would have caused your spouse or dependent child(ren), if any, to lose coverage under the plan if the original qualifying event had not occurred. Note that to receive this extension, you and/or your spouse and dependent child(ren), must notify Discovery Benefits, Inc. at (866) 451-3399 within 60 days of the occurrence of these events. If you fail to provide timely notice of a second qualifying event, your notification will be rejected and any additional COBRA coverage beyond the original 18-month (or 29-month) period will not be offered.

#### **Social Security Disability Determination**

If it is determined that you or any other qualified beneficiary in your family (e.g., your spouse or dependent child(ren), if any) was determined to be disabled (by the Social Security Administration) at any time during the first 60 days of COBRA coverage or before COBRA coverage began and the individual is still disabled at the end of the original maximum continuation period of coverage (generally 18 months), the original maximum continuation period may be extended for up to an additional 11 months for all qualified beneficiaries who elected COBRA coverage on account of the initial qualifying event. This extension only applies if Discovery Benefits, Inc. is notified before the end of the initial maximum COBRA period (generally 18 months) and within 60 days of the later of: (1) the date the qualified beneficiary is notified of the disability determination by the Social Security Administration; (2) the date you terminated or reduced your hours of employment; and (3) the date on which coverage would be lost under the plan as a result of your termination or reduction in hours of employment.

This notice shall be provided by calling Discovery Benefits, Inc. at (866) 451-3399 during business hours. If timely notice of the disability determination is not provided, the notification will be rejected and any additional COBRA coverage beyond the original 18-month period will not be offered. If the qualified beneficiary is no longer considered disabled, any COBRA coverage extended beyond the 18-month limit that would otherwise apply will be terminated for the disabled qualified beneficiary and all related qualified beneficiaries.

Federal law requires that you notify Discovery Benefits, Inc. at (866) 451-3399 of a determination by the Social Security Administration that you, your spouse, or dependent child(ren) are no longer disabled within 30 days of such a determination.

#### **Newborns and Adoptees**

A child who is born to or placed for adoption with you during a period of COBRA coverage will be eligible to become covered under the plan. In accordance with the terms of the Sparks Steak House group health benefits plan and the requirements of Federal law, these qualified beneficiaries can be added to COBRA coverage upon proper notification to Discovery Benefits, Inc. at (866) 451-3399 of the birth or adoption.

#### **Early Termination of COBRA Coverage**

COBRA coverage may terminate for the qualified beneficiary early if:

- (1) The required premium payment is not paid when due.
- (2) After the date of the COBRA election the qualified beneficiary becomes covered under another group health plan.
- (3) After the date of the COBRA election the qualified beneficiary becomes entitled to Medicare benefits.
- (4) All of Sparks Steak House group health plans are terminated.
- (5) If coverage is extended an additional 11 months due to disability, a final determination by the Social Security Administration that the individual is no longer disabled.
- (6) COBRA coverage may also be terminated for any reason the plan would terminate coverage of a participant or beneficiary not receiving COBRA coverage (such as fraud).

You or the qualified beneficiary (or a representative) must notify Discovery Benefits, Inc. if, after electing COBRA, a qualified beneficiary becomes entitled to Medicare (Part A, Part B or both) or becomes covered under another group health plan. For situations involving other health coverage, this notice must be provided within 30 days after the other coverage becomes effective. If this notice is not timely and properly provided, the qualified beneficiary's COBRA continuation coverage may be terminated retroactively and the qualified beneficiary may be required to repay a portion of the benefits received. This notice must be provided by calling Discovery Benefits, Inc. at (866) 451-3399 during business hours.



- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) restricts the extent to which group health plans may impose pre-existing condition limitations. These rules are generally effective for plan years beginning after June 30, 1997. HIPAA coordinates COBRA's other coverage cut-off rule with these new limits as follows.



Continuation coverage under COBRA is provided subject to your eligibility. The Sparks Steak House Plan Administrator reserves the right to terminate your COBRA coverage retroactively if you are determined to be ineligible for coverage. To be sure that you, your spouse and your dependent child(ren), if any, receive the necessary information concerning your rights, you should keep Discovery Benefits, Inc. informed of any address changes.

#### **Special Rule for Employees in the Uniformed Services**

If you are an employee and your coverage under the plan terminates due to your service in the uniformed services, you may elect special continuation coverage under the Uniformed Services Employment and Reemployment Rights Act (USERRA) for yourself and your covered spouse and covered dependents. This special continuation of coverage may extend for up to 24 months beginning from the date your plan coverage would otherwise terminate due to your service in the uniformed services. Service in the uniformed services includes your performance of duty on a voluntary or involuntary basis in the Armed Forces (including the Coast Guard and the Reserves), the Army National Guard, the Air National Guard, and the commissioned corps of the Public Health Service. If you believe this special continuation of coverage rule applies to you, please contact Discovery Benefits, Inc.

**You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage.**

#### **What is the Health Insurance Marketplace?**

The Marketplace offers "one-stop shopping" to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you'll also learn if you qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at [www.HealthCare.gov](http://www.HealthCare.gov).

Coverage through the Health Insurance Marketplace may cost less than COBRA continuation coverage. Being offered COBRA continuation coverage won't limit your eligibility for coverage or for a tax credit through the Marketplace.

#### **When can I enroll in Marketplace coverage?**

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based coverage is a "special enrollment" event. **After 60 days your special enrollment period will end and you may not be able to enroll, so you should take action right away.** In addition, during what is called an "open enrollment" period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit [www.HealthCare.gov](http://www.HealthCare.gov).

#### **If I sign up for COBRA continuation coverage, can I switch to coverage in the Marketplace? What about if I choose Marketplace coverage and want to switch back to COBRA continuation coverage?**

If you sign up for COBRA continuation coverage you can switch to a Marketplace plan during a Marketplace open enrollment period. You can also end your COBRA continuation coverage early and switch to a Marketplace plan if you have another qualifying event such as marriage or birth of a child through something called a "special enrollment period." But be careful though – if you terminate your COBRA continuation coverage early without another qualifying event, you'll have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once you've exhausted your COBRA continuation coverage and the coverage expires, you'll be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended.

#### **Can I enroll in another group health plan?**

You may be eligible to enroll in coverage under another group health plan (like a spouse's plan), if you request enrollment within 30 days of the loss of coverage.



If you or your dependent chooses to elect COBRA continuation coverage instead of enrolling in another group health plan for which you're eligible, you'll have another opportunity to enroll in the other group health plan within 30 days of losing your COBRA continuation coverage.

**What factors should I consider when choosing coverage options?**

Premiums: your previous plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace may be less expensive.

Provider Networks: if you're currently getting care or treatment for a condition, a change in your health coverage may affect your access to a particular health care provider. You may want to check to see if your current health care providers participate in a network as you consider options for health coverage.

Drug Formularies: If you're currently taking medication, a change in your health coverage may affect your costs for medication — and in some cases, your medication may not be covered by another plan. You may want to check to see if your current medications are listed in drug formularies for other health coverage.

Severance payments: If you lost your job and got a severance package from your former employer, your former employer may have offered to pay some or all of your COBRA payments for a period of time. In this scenario, you may want to contact the Department of Labor at 1-866-444-3272 to discuss your options.

Service Areas: Some plans limit their benefits to specific service or coverage areas — so if you move to another area of the country, you may not be able to use your benefits. You may want to see if your plan has a service or coverage area, or other similar limitations.

Other Cost-Sharing: In addition to premiums or contributions for health coverage, you probably pay copayments, deductibles, coinsurance, or other amounts as you use your benefits. You may want to check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

**For More Information**

This notice does not fully describe continuation coverage or other rights under the plan. More information about continuation coverage and your rights under the plan is available in the summary plan description (SPD) for your group health plan (SPD) or from the Plan Administrator. You can obtain a copy of the SPD by contacting the Sparks Steak House Human Resource Department during business hours. The SPD contains a complete description of your benefits.

For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, visit the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa) or call their toll-free number at (866) 444-3272. For more information about health insurance options available through a Health Insurance Marketplace and to locate an assister in your area who you can talk to about the different options, visit [www.healthcare.gov](http://www.healthcare.gov).

**Keep Your Plan Informed of Address Changes**

In order to protect your family's rights, you should keep Discovery Benefits, Inc. informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to Discovery Benefits, Inc..

This notice is a summary of your COBRA rights. For answers to specific questions, please contact our Customer Service Department at (866) 451-3399 during business hours.

Sincerely,

Discovery Benefits, Inc.

## Discovery Marketplace



Looking for more insurance options?

Discovery Marketplace offers a wide array of products ranging from health insurance to pet insurance. Through the Marketplace, you'll have access to many different providers and competitive prices.

The new Health Reform laws require individuals to own health insurance. Many people find that continuing insurance through COBRA is unaffordable. Discovery Marketplace offers insurance products to fit your budget. If you are interested in what your options are, we are here to help. Please visit [www.DiscoveryMarketplace.com](http://www.DiscoveryMarketplace.com).



**COBRA CONTINUATION COVERAGE ELECTION FORM****Sparks Steak House**

**IMPORTANT: PLEASE RETAIN A COPY OF THIS COBRA ELECTION FORM FOR FUTURE REFERENCE.  
THIS FORM CONTAINS INFORMATION ABOUT YOUR RIGHTS UNDER COBRA.**

To continue coverage, you must complete and submit this election form to Discovery Benefits, Inc. no later than the Election Period End date ("Last Day To Elect") listed below. If this election form is not returned within the enrollment period described below for each plan, you will lose your right to elect coverage. After you have elected to continue coverage under COBRA, you must pay the initial premium, which includes the period of coverage from your First Day of COBRA to the date of your election and any regularly scheduled monthly premiums that become due between your election date and the end of the initial premium payment period.

Please note that you will become fully enrolled in COBRA and reinstatement notices will be sent once you have elected continuation and paid your account current within your initial grace period. To be paid current means that you have paid all premiums which have become due during your initial grace period.

If you waive coverage under COBRA before the end of the enrollment period, you can change your mind and continue coverage by submitting your completed election form before the end of the enrollment period described below for each plan.

There may be other coverage options for you and your family. When key parts of the health care law take effect, you'll be able to buy coverage through the Health Insurance Marketplace. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Being eligible for COBRA does not limit your eligibility for coverage for a tax credit through the Marketplace. Additionally, you may qualify for a special enrollment opportunity for another group health plan for which you are eligible (such as a spouse's plan), even if the plan generally does not accept late enrollees, if you request enrollment within 30 days.

If you have questions about COBRA or need assistance to complete your election form, please contact our Customer Service Department at (866) 451-3399 during business hours.

**Qualified Beneficiary(QB):**

Milazim Kukaj  
45 Louisa Street  
2nd Floor  
Brooklyn, NEW YORK 11218

Event Date: 12/31/2014  
Event Type: Termination  
Second Event: No

COBRA gives you the right to elect coverage independently. You, your spouse or dependent child(ren), if any, may elect single coverage and not include those individuals who do not wish to continue coverage.

**Premium Information:**

Plan Name	Coverage Level	Monthly Premium
Aetna Dental PPO	QB Only	\$41.10
Aetna Medical PSO	QB Only	\$902.79
<b>Total Premium:</b>		<b>\$943.89</b>

Plan Name	First Day of COBRA	Last Day of COBRA	# Months of COBRA	Last Day To Elect	Initial Grace Period Days	Subsequent Grace Period Days
Aetna Dental PPO	1/1/2015	12/31/2017	36	3/17/2015	45	30
Aetna Medical PSO	1/1/2015	12/31/2017	36	3/17/2015	45	30

Dependent information is required if you are enrolling in a plan that covers dependents. Please list each of the individuals electing continuation (including yourself, if applicable) along with their social security number, date of birth and gender. Each individual listed must have been covered immediately preceding your qualifying event.

Qualified Beneficiary	SSN	Date of Birth	Gender
1. _____			
2. _____			

3. \_\_\_\_\_  
 4. \_\_\_\_\_  
 5. \_\_\_\_\_



Please provide a phone number where you can be reached in case there are questions regarding your account:

\_\_\_\_\_

**Election Options (Individuals Enrolled Prior to Qualifying Event):**

Please indicate the COBRA continuation coverage you are electing by checking the applicable box(es).

Name	Relationship	Date of Birth	SSN
Milazim Kukaj	QB	4/17/1972	xxx-xx-2936
Accept <input type="checkbox"/> Waive <input type="checkbox"/>	Aetna Dental PPO		
Accept <input type="checkbox"/> Waive <input type="checkbox"/>	Aetna Medical PSO		

All correspondence and premium payments should be remitted directly to the address below. Payment must be in the form of a check or money order. DO NOT send cash.

Discovery Benefits, Inc.  
 Discovery Benefits  
 PO Box 2079  
 Omaha, NE 68103-2079

Please pay only the amount due. If overpayment is made and you continue your COBRA coverage, the overpayment is applied to the next month's premium. To check the status of your payments, log into the member portal at [www.discoverybenefits.com](http://www.discoverybenefits.com) or contact our office at 866-451-3399, options 1, 2. To confirm whether your COBRA coverage is effective, call our Customer Service Department at (866) 451-3399.

Acceptance of your COBRA payment, whether by check, credit card, debit, money order or any other method of payment, does not guarantee that you have COBRA coverage. Our billing system is automated. This means that, in most cases, we will automatically accept your COBRA payment before we are able to verify whether you are eligible for COBRA coverage. Once we receive your payment, we will review our records to confirm that you are eligible for COBRA coverage.

If you terminate COBRA with a balance of less than \$25.00, this amount will not be refunded to you due to the administrative cost. Rather, it will be used by the employer who sponsors the group health plan to pay for plan administration expenses. Standard processing of any refund is 15 business days from the date the written request for a refund is received.

[ ] I have read this form and the notice of my election rights. I understand my rights to elect continuation coverage and would like to take the action indicated above. I understand that if I elect continuation coverage, my continuation coverage will terminate under several circumstances according to COBRA regulations, including: non-payment of premium, the date I become covered under another Group Health Plan or become entitled to Medicare after the COBRA election, or on the date which this Group Plan ends.

I understand that future premiums are due the first of each month. I also understand that failure to pay the required premiums will result in termination of COBRA rights and coverage.

Signature \_\_\_\_\_ Date \_\_\_\_\_

\*NOTE: If signature line is on a second page, be sure to include all pages of the election form. We will not be able to process your election without the entire form.

## New York State Continuation



Under New York state law, a qualified beneficiary, who has exhausted continuation coverage under federal COBRA, has the opportunity to continue coverage for up to 36 months from the date the continuation coverage began. This rule applies only if the individual was entitled to less than 36 months of continuation coverage under federal COBRA. This continuation coverage law applies to insured plans and health maintenance organizations in New York, but does not apply to self-insured group health plans.

For additional information regarding New York State continuation and your eligibility, please visit [http://www.dfs.ny.gov/consumer/cobra/cobra\\_ext\\_36.htm](http://www.dfs.ny.gov/consumer/cobra/cobra_ext_36.htm)

## New Member Login Notice



An integral part of our broad service offering is our Member Self-Service Portal (Member Portal). We have designed the Member Portal to be an information-rich and secure website empowering you with the tools and information to efficiently and accurately manage your continuation under the Sparks Steak House group health plans. We encourage you to leverage the powerful tools contained in the Member Portal anytime, from any location. Examples of information and tools you'll find on the Member Portal include:

1. Payment information (last received and next due)
2. Coverage information (plans and critical dates)
3. Copies of all communications we've sent to you
4. Make COBRA Elections online
5. Make Payments Online

Below is your unique registration identification number needed to become an authorized user of our website. Please visit <http://cobra.discoverybenefits.com> and click on the New User Registration link and follow the registration process as described. Please note you will be asked to supply a second piece of identification which will be your social security (SSN) number. In order to expedite the registration process, please make sure you have this information with you before beginning the new user registration process.

Registration Code: 7NsFzQMy

Please keep this letter with other important documents. You may need to reference the registration code in the future if your password needs to be changed.

You can now elect online through your Member Self-Service Portal (Member Portal). Online election is available until 11:59 PM Central Time on the earliest last day to elect, if applicable. Electing online is a safe, fast and secure way to ensure your elections are processed. Please visit <http://cobra.discoverybenefits.com> to register and complete your online election.

**SCHEDULED ACH PREMIUM PAYMENT OPTION**

Did you know you can set up scheduled ACH for your monthly payments? ACH is a safe, fast and secure way to ensure your monthly payment is made on time, every time. To sign up, login to your Member Portal and download the ACH form from the ACH tab and send it in for processing. Also, you may contact our offices and we will send you an ACH form and help with any questions or comments.

If you should ever have any questions or comments, please do not hesitate to contact our offices at (866) 451-3399 during business hours. Our entire staff is looking forward to getting to work for you.



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OC 9

Lori Dodge

From: Lisa O'Leary [Loleary@UFCW342.ORG]  
Sent: Wednesday, December 31, 2014 11:29 AM  
To: Martin Milner  
Cc: Lou Sollicito; Lori Dodge; Lisa Boutis  
Subject: FW: your client Sparks- Local 342 unconditional offer to return to work today

Exh. No. OC 9 Received / Rejected /

Case No.:

Case Name: SPARKS RESTAURANTNo. Pgs: 3Date: 1/1/15Rep.: BA

-----Original Message-----

From: Lisa O'Leary  
Sent: Monday, December 22, 2014 11:14 AM  
To: 'Marc Zimmerman'  
Cc: Regina E. Faul  
Subject: RE: your client Sparks- Local 342 unconditional offer to return to work today

UFCW Local 342 disagrees with your characterization of events in the second and third paragraphs below. I restate: UFCW Local 342 continues to make an unconditional offer to return to work, and that our position is that Sparks employees are locked out. I restate: UFCW Local 342 urges your client to reconsider his position concerning mediation services. I will need to make sure January 7th is good before I confirm, but will get back to you without unreasonable delay. Thank you for your response, and I will pass it on.

-----Original Message-----

From: Marc Zimmerman [mailto:mzimmerman@phillipsnizer.com]  
Sent: Monday, December 22, 2014 10:53 AM  
To: Lisa O'Leary  
Cc: Regina E. Faul  
Subject: RE: your client Sparks- Local 342 unconditional offer to return to work today

Hi Lisa,

I write in response to your e-mail Friday evening and apologize for not getting back to you sooner.

The e-mails I received on Friday from Janel D'Amassa (on Rich's behalf) did not propose an unconditional offer to return to work of the striking employees. Rather, Rich's offer was conditioned on Sparks' agreement to "meet for a bargaining session some time between Christmas and New Year's Eve." Nonetheless, I understand from your e-mail that the union has since revised that position and now proposes an unconditional return of the striking employees.

Due to serious misconduct and unprotected activity by the union, its representatives and the striking employees during the two separate strikes at Sparks between December 5 and December 19, including without limitation, violence, threats and intimidation towards patrons and employees, destruction of property and trespass, be advised that Sparks must reject the union's offer to return the striking employees to work at this time. After much consideration, Sparks has determined this option best protects the safety and security of its patrons, employees and delivery people from the conduct described above, and reserves all legal rights in connection with the union's and Sparks' employees' conduct.

Sparks' decision has no bearing on its desire to continue to bargain in good faith with the union for an initial contract, and we look forward to meeting in person on January 8. Alternatively, Sparks would be able to reschedule our next bargaining session to January 7, if the union would be willing to push our normal start time back a bit to 11:30 a.m. Please

let me know if that date/time works for the union. Woodbridge, New Jersey is not a convenient location for us to meet. If the union is unwilling to use our offices (as has been our custom to alternate between our place and yours), we can arrange for a "neutral" site that is more accessible to both parties. In the interim, I fully expect to provide you with Sparks' written counterproposals to the union's December 10 bargaining proposals early this week and welcome any written response the union sees fit to make in advance of our in-person bargaining session.

Marc

Marc B. Zimmerman, Esq.  
Phillips Nizer LLP  
666 Fifth Avenue  
New York, New York 10103-0084  
Tel: (212) 841-0512  
Fax: (212) 262-5152  
mzimmerman@phillipsnizer.com

-----Original Message-----

From: Lisa O'Leary [mailto:Loleary@UFCW342.ORG]  
Sent: Saturday, December 20, 2014 10:56 AM  
To: Marc Zimmerman  
Cc: Regina E. Faul  
Subject: Re: your client Sparks- Local 342 unconditional offer to return to work today

Not a problem Marc thank you

Sent from my iPad

> On Dec 20, 2014, at 10:31 AM, "Marc Zimmerman" <mzimmerman@phillipsnizer.com> wrote:

>

> Hi Lisa,

>

> I write to confirm receipt of your e-mail to me from last evening. I will try to respond substantively to you later today.

>

> Please direct all future correspondence regarding this matter to me directly, and I ask your cooperation in copying my partner, Regina Faul at rfaul@phillipsnizer.com<mailto:rfaul@phillipsnizer.com> (copied) on all such correspondence.

>

> Thank you.

>

> Marc

>

> Marc B. Zimmerman

> Phillips Nizer LLP

> 666 Fifth Avenue

> New York, New York 10103-0084

> Tel: (212) 841-0512

> Fax: (212) 262-5152

> mzimmerman@phillipsnizer.com<mailto:mzimmerman@phillipsnizer.com>

>

> On Dec 19, 2014, at 8:55 PM, Lisa O'Leary <Loleary@UFCW342.ORG<mailto:Loleary@UFCW342.ORG>> wrote:

>